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CLASSIFIED INDEX
of
NATIONAL LABOR RELATIONS BOARD DECISIONS
and
RELATED COURT DECISIONS

AUGUST 1980

PREFACE

The Board and court decision classifications and scope notes in this classified index have been prepared by the Board's Legal Research and Policy Planning Branch, Division of Advice, Office of the General Counsel, as a selective index to decisions issued by the Board and to related court decisions. They are in no sense official rulings or pronouncements of the Board, nor are they to be viewed as official interpretations of Board or court decisions.

The classification system used is that established by the Classification Outline for Decisions of the National Labor Relations Board and Related Court Decisions. As the format of this index publication renders it unsuitable for direct access to classification headings, reference should be made to the Classification Outline for the subject matter headings desired for research and for their associated numerical code identification. Instructions for the use of the Outline and this Index are contained in the preface of the Outline.

This publication covers Board decisions issued from January 1, 1980, through August 31, 1980 (Part of Volume 247 through part of Volume 251) and contains court decisions issued from January 1, 1980, through August 31, 1980. No unreported court decisions are included. The index entries supplement those published in the publication of this same title dated June 1974, December 1976, and December 1979, which are available from the Superintendent of Documents, Washington, D.C. 20402.

Board decisions are cited by volume and folio number. Court decisions are cited by official reporter citation where available and by other commercial services when not available. JD references refer to Administrative Law Judge's decisions adopted by the Board under section 10(c) of the National Labor Relations Act, as amended, and section 102.48 of the Board's Rules and Regulations. DS references refer to Decisions by Stipulation issued by the Board upon approval of formal settlement agreements in unfair labor practice proceedings.

Copies of Decisions by Stipulation and Administrative Law Judge Decisions are available upon request directed to the Freedom of Information Officer, N.L.R.B., Washington, D.C. 20570, subject to payment of fees in accordance with the Agency fee schedule. Such requests should specify the case, name, the date of issuance and the case number for each document requested. These decisions will also be available for inspection in the public reading room of the National Labor Relations Board, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. Copies will be available to any member of the public upon a payment of direct duplication costs.

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Washington, D.C. 20402

ABBREVIATIONS

affd	Affirmed
affg	Affirming
ALJ	Administrative Law Judge
ans	Answer
br	Brief
Bd	Board
C	Complaint
c/d	Cease and desist
c/d/b	Cease doing business
CongRec	Congressional Record
ct	Court
distg	Distinguished
D/O	Decision and order
E	Employer
Ee	Employee
enf/rev	Enforcement and review proceedings
Gc	General Counsel
inj	Injunction
LMRA	Labor Management Relations Act, as amended
mtn	Motion
NMB	National Mediation Board
opn	Opinion
P&M	Production and Maintenance
ptn	Petition
qcr	Question concerning representation
R	Representation
RD	Regional Director
R/O	Remedial order
R/R	Rules and Regulations
SCt	Supreme Court
SIC	Standard Industrial Classification
TRO	Temporary restraining order
U	Union
Us	Unions
ULP	Unfair labor practice(s)
w/o	Without
w/i	Within

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100 NLRA, AS AMENDED

111 CONSTITUTIONALITY OF APPLICATION OF NLRA

5000 FIRST AMENDMENT TO CONSTITUTION

Harborcreek School for Boys **249 NLRB No. 177**
(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

RJR Communications, Inc. **248 NLRB No. 124**
(order requiring E to resume 6 o'clock newscast does not infringe E's first amendment rights where newscast discriminatorily discontinued and media *has no special privileges to invade rights and liberties of others*)

World Evangelism, Inc. **248 NLRB No. 117**
(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds and Ees' performance of work necessarily associated with those commercial activities)

Mid American Health Services, Inc. **247 NLRB No. 109**
(final determination concerning whether Bd's asserting jurisdiction over nursing home run by Seventh Day Adventists is unconstitutional under the 1st amendment must come from cts)

Catholic Community Services **247 NLRB No. 103**
(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

5800 FIFTH AMENDMENT TO CONSTITUTION

N.L.R.B. v. Hy-Lond Enterprises, Inc., d/b/a Hy-Lond Convalescent Hospital **Dkt. No. 78-1713 (C.A. 9, March 21, 1979 (unreported))**
(failure to hold evidentiary hearing on E's objections to elections did not deny E right to due process of law)

7500 FOURTEENTH AMENDMENT TO CONSTITUTION

122 PURPOSE AND POLICY OF NLRA

3300 LEGISLATIVE HISTORY

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**

(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**

(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

Mid American Health Services, Inc. **247 NLRB No. 109**

(legislative history of 1974 health care amendments to Act indicates that Congress intended Act to apply to health care institutions operated by religious institutions thus nursing home run by Seventh Day Adventists comes w/i Bd's jurisdiction)

6700 SAVINGS PROVISION

133 RELATIONSHIP TO OTHER STATUTES AND PUBLIC POLICY

0100 GENERALLY

1200 SECTION 302(a) - RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

2500 LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT

3000 MARITIME LAWS

3500 EXECUTIVE ORDERS

3600 OCCUPATIONAL SAFETY AND HEALTH ACT

3700 URBAN MASS TRANSPORTATION ACT OF 1969

3800 INTERSTATE COMMERCE ACT

3900 IMMIGRATION AND NATURALIZATION ACT

4000 EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**
(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

5000 FEDERAL SERVICE CONTRACT ACT OF 1965

5600 PRIVACY ACT

5800 FEDERAL WIRETAPPING STATUTE

6200 FREEDOM OF INFORMATION ACT

6201 GENERALLY

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**
(applicability of FOIA exemptions must be determined in context of specific individual documents and request for *any documents indicating Region's final determination of the petitioner's showing of interest or lack thereof* is too general)

6225 (EXEMPTION 4) TRADE SECRETS

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**
(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

American Airlines, Inc. v. National Mediation Board; et al. **588 F.2d 863 (C.A. 2, 1978)**
(U authorization cards held exempt from disclosure as commercial information where U supplied information to National Mediation Board in reliance on regulations that it would be kept confidential; information relates to delicate area of labor relations as it deals with U's effort to obtain majority support and certification and disclosure would adversely affect U's competative position with other Us and e itself)

6250 EXEMPTION 5

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**
(advice memorandum privileged from disclosive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

6260 (EXEMPTION 6)

Howard Johnson Company, Inc. v. N.L.R.B. **618 F.2d 1 (C.A. 6, 1980)**
(district ct reversed and case remanded to Bd with directions to enter summary judgment in favor of Bd position on U authorization cards falling w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**
(Exemption 6 of FOIA precludes E from obtaining signed U authorization cards or other Bd documents which reveal voting preferences of individual Ees because such disclosure would be an invasion of personal privacy; ct held authorization cards fell w/i meaning of *similar files* of exemption refusing to give term narrow and technical meaning)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**
(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

6275 EXEMPTION 7

N.L.R.B. v. Croft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**
(applying FOIA Exemption 7(A) in contempt proceeding, Special Master required Bd, ten days prior to hearing, to provide E with summary of expected testimony of exempted witnesses w/o disclosing their names, and required Bd, on day any such witness is to testify, to provide E with any affidavit or prior statement of such witness w/i its possession)

N.L.R.B. v. Croft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**
(affidavits taken by Bd in its investigation fall w/i FOIA Exemption 7(A) and need not be disclosed prior to hearing even in civil contempt cases as herein; there is no distinction between enforcement proceedings before ALJ and contempt proceedings as both are instituted to enforce compliance with Act, and Bd's prosecutorial function remains the same; risk of intimidation of witnesses because of premature disclosure is no less a risk in contempt cases; and it is irrelevant that there is no reason to suspect that E herein would attempt to coerce a witness)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**
(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

6287 APPEALS FROM INITIAL DETERMINATION

The Capital Times Company v. N.L.R.B. **483 F.Supp. 247 (D Ct. WI) (1980)**
(statutory policy allows agency to determine *first* the merits of FOIA request)

7200 ANTITRUST STATUTES

133-RELATIONSHIP TO OTHER STATUTES AND PUBLIC POLICY

7300 FEDERAL MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

7500 ECONOMIC STABILIZATION ACT OF 1971

7600 DAVIS BACON ACT

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(contention that definition of jobsite work in construction industry proviso of 8(e) should be indentical to definition of jobsite work in Davis-Bacon Act, rejected, since that Act broader in coverage as remedial statute than 8(e) proviso)

8100 RAILWAY LABOR ACT

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(punitive damages were not permitted under Railway Labor Act for U's breach of duty of fair representation)

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. **No. 78 C 749 (D Ct. IL, Sept. 28, 1978 (unreported))**
(Bd correctly refused to order election among E's truckdrivers and deferred to ruling by National Mediation Board that E was carrier under Railway Labor Act and not subject to Bd jurisdiction)

8200 BANKRUPTCY STATUTES

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**
(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive jurisdiction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

Shippers Interstate Service, Inc. v. N.L.R.B. **618 F.2d 9 (C.A. 7, 1980)**
(where company is being reorganized rather than liquidated and assets are not threatened, Bankruptcy Rule 11-44 shall not apply and regulatory proceedings of NLRB are not subject to automatic stay provisions of that rule)

8300 FOREIGN SOVEREIGN IMMUNITY ACT OF 1976

8400 FEDERAL COMMUNICATIONS ACT

8600 FEDERAL TAX CODE

8700 STATE STATUTES

8775 MUNICIPAL ORDINANCES

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(State ct decisions limited to interpretation of term *Es* for purposes of workmen's compensation coverage were not dispositive of E-Ee relationship in context of NLRB particularly in light of 1947 amendments to that legislation)

8900 FEDERAL RULES OF CIVIL PROCEDURE

9000 TITLE (VII) OF THE CIVIL RIGHTS ACT

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**
(mtn for summary judgment against E dismissed where it was clear from record that no genuine issues as to facts material to resolution of instant action existed; ct not pursuaded that plaintiff made *prima facie* case regarding E's discrimination against her for U activities by firing her and not granting her maternity leave)

9100 SOCIAL SECURITY ACT-MODEL CITIES PROGRAM

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**
(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend preempt that exercise of state power)

144 CONSTRUCTION

5000 **LEGISLATIVE HISTORY**

7500 **COURT INTERPRETATION OF STATUTORY PROVISIONS**

155 AMENDMENTS OF NLRA

2000 CONSTITUTIONALITY OF AMENDMENTS

4000 EFFECTIVE DATE OF APPLICATION

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

6000 RETROACTIVE APPLICATION

8000 EFFECT OF AMENDMENTS

Bon Secours Hospital, Inc. **248 NLRB No. 019**
(1974 health care amendments show intent of Congress that Ees of religiously operated hospitals, unlike schools, are covered as it specifically refused to exclude such hospitals from coverage under Act; therefore assertion of jurisdiction proper)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(State ct decisions limited to interpretation of term *Es* for purposes of workmen's compensation coverage were not dispositive of E-Ee relationship in context of NLRB particularly in light of 1947 amendments to that legislation)

166 SEPARABILITY OF PROVISIONS

177 STATUTORY DEFINITIONS

0800 'PERSON'

1600 'EMPLOYER'

1601 GENERALLY

Taylor Hospital **249 NLRB No. 031**
(hospital, rather than vending company responsible for dietary department, found E of dietary Ees at hospital where hospital demonstrated its authority to determine policies, terms and conditions of employment for dietary Ees, and community of interest of dietary Ees with hospital's other Ees had not been diminished by hospital's arrangement with vending company)

United States Steel Corporation **248 NLRB No. 090**
(safety and education plan found not an E notwithstanding plan is composed of 79 E-members, including 3 Es who fund and sponsor a school preparing individuals to become licensed officers pursuant to agreement)

1633 PERSONS FOUND TO BE EMPLOYERS

1633-5000 **Combinations of employers**

1633-5017 Independent contractors

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

1633-5041 Owners of rental property

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

1633-5067 Enterprises under common management

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

1633-5071 Enterprises with common ownership

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**
(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

1633-5073 Double-breasted operations

A--1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. **250 NLRB No. 034**
(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable waiver* standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

1633-5075 Single integrated enterprise

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(notwithstanding that two Es were separate legal entities with separate bank accounts etc., they were held single E where operations of both Es were interrelated; one E was other's sole customer and existed for sole purpose of serving other; both Es had common management, supervision and elements of common ownership)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(2 Es found single integrated enterprise and/or joint E where they have same majority owner, president, dispatcher, and office manager, same business, facilities and Ees, and, most significantly, same person determining labor relations policy)

Land Equipment Inc. **248 NLRB No. 098**
(company renting construction equipment with operators to building contractors and company furnishing labor to above company held single E in view of interrelationship of operations, and common ownership, management and control of labor relations policies)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(U and nonU plants held single or joint E in view of same ownership, managers, engineers, research staff, maintenance staff, office clerical staff, head manager and director of labor policy and interchange of personnel and resources)

Tri-State Warehouse

1633-7500 **Employer alter ego**

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation, proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter ego found where business continued in same form except for name; same owner-manager, finished 2 projects started by first company, purchased all equipment, rehired all Ees, and although stock held in different proportions, family ownership same)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(new company held alter ego of prior company where prior company owned physical premises which housed new company and its operations; new company organized to perform exactly the same work formerly performed by prior company; work of new company performed by identical Ees and supervision; new company operated with machinery and equipment transfered from prior company)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**

1633-7500—Cont.

(sole proprietorship held *alter ego* of and single E with corporation where sole proprietorship was established by president and sole shareholder of corporation and assumed and continued corporation's operations for benefit of corporation, utilizing substantially same capital and equipment, employing same management and supervisors, and providing same services to substantially same customers as corporation)

Local 1115, Joint Board, Nursing Home

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(international trucking corporation held alter ego of corporation owning its only voting stock, maintaining 3 to 1 majority on its board, and with power to approve all major decisions, including execution of U contract, where both corporations used same facilities, trucks and spare parts, and office and service equipment, had same overall supervision and engaged in same business in same market)

Tri-State Warehouse

Atlan Inc. **JD-890-79**
(E which acquired all physical assets of predecessor, engaged in substantially same business operations as formerly engaged in by predecessor, and employed as manager the predecessor's president and principal stockholder, held successor to and *alter ego* of predecessor)

N.L.R.B. v. Scott Printing Corporation and J

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(successor E held alter ego of prior E where successor was corporation with single shareholder who in turn was son of husband and wife owning prior E, and successor was created to avoid unionization)

1633-8700 Deliverymen and owners, drivers, lessors and lessees of trucks

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

1642 SINGLE EMPLOYER

Samco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(corporation which primarily manufactured scissor jacks and jack stands and corporation which made component parts for jacks for manufacturing corporation, held single E, where between two corporations was common ownership and financial control, integration of operations, centralized control of labor relations, and partial degree of common management)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(notwithstanding that two Es were separate legal entities with separate bank accounts etc., they were held single E where operations of both Es were interrelated; one E was other's sole customer and existed for sole purpose of serving other; both Es had common management, supervision and elements of common ownership)

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**
(two taxi companies held single E where one company had no separate corporate indentity but existed solely as operating branch of other, same E officials signed U contract for both, there was common ownership, all of one company's business and personnel policies were established by officials of other company, taxis from each company's garage received orders relayed from same dispatching office, major support and repair services provided at one garage, and paychecks for both companies drawn on one bank account)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(sole proprietorship held *alter ego* of and single E with corporation where sole proprietorship was established by president and sole shareholder of corporation and assumed and continued corporation's operations for benefit of corporation, utilizing substantially same capital and equipment, employing same management and supervisors, and providing same services to substantially same customers as corporation)

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**
(in secondary boycott case involving picketing at one of national company's branches in support of primary dispute at another branch, Bd held E and its branches constituted single E, in view of E's policy of cross-shipping whereby other branches perform work of struck branch, and fact that E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(two diners held single E where they were owned by same individual who was in charge of their industrial relations, they employed same accountant, interchanged managers and waitresses, and were engaged in same business activity)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(corporation founded for sole purpose of contructing and owning real property of home for enfeebled and infirm adults found single E with home, in view of common ownership and management and centralized control over labor relations)

Land Equipment Inc. **248 NLRB No. 098**
(company renting construction equipment with operators to building contractors and company furnishing labor to above company held single E in view of interrelationship of operations, and common ownership, management and control of labor relations policies)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(corporation and partnership engaged in coal stripping business and road construction business respectively, held single E where corporation's president and vice president were sole partners in partnership, both companies had common office facilities, wife of corporation's vice president performed office, bookkeeping, and clinical functions for both companies, some of same Ees worked for corporation in winter and for partnership in summer and operations of the two companies were somewhat complimentary)

Safety Electric Corporation and San Joaquin Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**
(single E found where same individual was functioning as chief executive officer of two corporations)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(two Es held single E in view of interrelation of operations shown by transfer of Ees and tools to one E from other E, common accountant and address, (2) common management in view of control at policy level and same *qualifying* individual on license for both Es, (3) centralized labor relations where same person who formed nonU crew signed U contract and dealt with U, and (4) common ownership, same person owning 70% of one E, 50% of other)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(single-E status depends on *all the circumstances of the case* and is characterized as absence of *arm's length relationship found among unintegrated companies* and is based on four criteria: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership; determination of single-E status is sustained *if it has warrant in the record and a reasonable basis in law*)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that fact that subsidiaries comprised a single E necessarily established that single unit of Ees of both subsidiaries was appropriate; a single E determination does not necessarily establish that E-wide unit is appropriate)

1650 JOINT EMPLOYERS

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(2 Es found single integrated enterprise and/or joint E where they have same majority owner, president, dispatcher, and office manager, same business, facilities and Ees, and, most significantly, same person determining labor relations policy)

1650—Cont.

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(E operating legal services organization held not joint E with federal agency, where E is contractor who needs no clearance from agency to hire and fire Ees and establish conditions of employment, engages in collective bargaining w/o permission or consultation with agency, has no agency Ees supervising its activities, and agency's monitoring reports and fiscal audits are directed at performance of management, not labor; changes in statute and regulations since Bd last asserted jurisdiction over E did not pertain to labor relations and practices of E)

Kenner Products Division, CPG Products Corporation, and Jeannine Robbins, d/b/a Schnabel's Drivers For Lease **249 NLRB No. 163**
(joint-E relationship found where one E leases its drivers to other E; lessor hires, maintains fleet, handles all payroll functions, establishes and maintains written rules; lessee-E dispatches Ees, gives orders as to what runs to take, which trucks to use, proper routes to take, and controls discipline)

Kenner Products Division, CPG Products Corporation, and Jeannine Robbins, d/b/a Schnabel's Drivers For Lease **249 NLRB No. 163**
(two businesses not found joint-Es where businesses are separately owned, completely different types of businesses, separate E identification numbers, separate unemployment compensation accounts, separate tax accounts, one business owns trucks and employs drivers to make deliveries and other E leases drivers to truck owning company, notwithstanding close family relationship between owners of companies)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(resolution of any issue which may arise regarding nature of joint E relationship between E and another enterprise and successor E relationship between E and purchaser left to compliance stage)

California Labor Industries, Inc. **249 NLRB No. 087**
(limited instances of company's participation in management of E, set against an otherwise complete absence of participation in E's labor relations, is insufficient to establish joint-E relationship)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(company which acted as job broker and financier for E not joint E where: no common ownership, n1 authority or day-to-day control over Ees' work, lack of control over labor relations)

Children's Receiving Home of Sacramento **248 NLRB No. 053**
(where governmental department made precise recommendations as to number of positions and their accompanying wages and benefits at childrens' home but home was free to deviate from recommendations, governmental department was not joint E with home)

U.S. Pipe

The North American Soccer League, etc., et al. v. N.L.R.B. **613 F.2d 1379 (C.A. 5) (1980)**
(soccer league and its constituent member clubs held joint E where league exercised significant degree of control over essential aspects of the clubs' labor relations and each club granted the league authority over not only its own labor relations but also, on its behalf, authority over labor relations of other member clubs)

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(where husband and wife employed by innkeeper operating motel and restaurant assumed his restaurant lease as partnership, partnership was found not to be joint E with innkeeper since partners made all decisions on labor relations at restaurant, managed it, did not include innkeeper in partnership and had no financial interest in his motel franchise)

N.L.R.B. v. Chicago Youth Centers **616 F.2d 1028 (C.A. 7, 1980)**
(public agency has control over funding, job classification and compensation, and other terms and conditions of employment of head start program run by private agency; thus public and private agencies are joint-Es and private agency shares exemption of public agency under Sec. 2(2) of Act from Bd jurisdiction)

N.L.R.B. v. Chicago Youth Centers **616 F.2d 1028 (C.A. 7, 1980)**
(public agency has control over funding, job classification and compensation, and other terms and conditions of employment of head start program run by private agency; thus public and private agencies are joint-Es and private agency shares exemption of public agency under Sec. 2(2) of Act from Bd jurisdiction)

The Pulitzer Publishing Company v. N.L.R.B. **618 F.2d 1275 (C.A. 8, 1980)**
(newspaper publisher held not joint E with newspaper delivery company of drivers delivering publisher's newspapers, since they have no common ownership or management, their operations are not substantially interrelated except for delivery company's contractual delivery of publisher's newspapers, and there is neither centralized control of labor relations nor substantial control of labor relations by publisher)

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(where E transferred 3 of its Ees to another E's payroll but continued to control work schedules, assigned work and decided when additional Ees needed; joint-E relationship exists)

1667 SUCCESSOR EMPLOYERS

C.J.B. Industries **250 NLRB No. 184**
(new owner held successor where he operates business as predecessor did, using same equipment to produce same product, at same location and although he failed to retain former Ees, it was because of their U affiliation)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(resolution of any issue which may arise regarding nature of joint E relationship between E and another enterprise and successor E relationship between E and purchaser left to compliance stage)

Saks

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(E held successor and obligated to recognize and bargain with U where immediately after takeover all Ees in unit were Ees of predecessor E, and notwithstanding flucuation in size of unit during following 77 days, Ees of predecessor constituted majority of unit)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(Bd certification not necessary to trigger obligation to bargain of successor E)

1667-0100 Generally

Local 1115, Joint Board, Nursing Home

Local 1115, Joint Board, Nursing Home

Hospital San Miguel, Inc. **JD-287-80**
(where transfer of stock and sale of assets with lease back to E occurried, and hospital's name unchanged, same equipment used, Ees remained same, supervisory staff unchanged, corporate charter unchanged, refusal to bargain with U violative either because Respondent, a corporate entity remained same employing entity, or because E held successor)

Oil, Chemical and Atomic Workers International Union, Local 6-578 (D

1667-5000 Same employing industry

Franklin Fouts, d/b/a B

Cablevision Systems Development Company, A Partnership **251 NLRB NO. 176**
(cable TV company held successor E to subcontractor where it terminated subcontracting relationship, bought certain amount of subcontractors' equipment and vehilces, took over subcontractor's functions, and hired Ees of whom vast majority had been employed by subcontractor to do same work that they had done for subcontractor)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**

World Evangelism, Inc. **248 NLRB No. 117**
(network of interdenominational Evangelical Christian ministries found successor E to hostelry from which it purchased hotel-office-building complex as commercial source of revenue)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**
(E held successor and obligated to recognize and bargain with U representing Ees of predecessor where after purshase it continued same operation at same location using essentially same equipment and providing same services to substantially same individuals)

Barclay Hospital, Inc. **247 NLRB No. 144**
(E held successor in view of continuity of employing industry where E had knowledge that predesessor's Ees had selected U as their representative in Bd election, E purchased assets of predecessor and took over operation w/o any interruption of services, and retained all of predecessor's supervisory personnel as well as its employees; changes eventually implemented by successor did not render operation substantially different from that of predecessor, nor was there any contention that changes rendered certified unit inappropriate)

Atlanta Baking Company, Inc. **JD-288-80**
(purchaser-lessee of terminated bakery's inventory, plant, equipment and business found successor to seller-lessor in view of continuation of same business operations w/o hiatus, use of same facilities and work force as predecessor with same mode of payment and same customers served in same manner)

Venture Stores, Inc. **JD-81-80**
(E which built distribution center to service both its previously owned and its newly purchased stores held not successor at distribution center to E from which it purchased stores, since purchaser neither employed majority

1667-5000—Cont.

of seller's Ees there on critical date nor was it perfectly clear that it would do so in future; moreover distribution center did not involve same location, plant, equipment, methods, service or customers as seller's distribution facility and its Ees were not accretion to unit of Ees employed at stores which were purchased)

Atlan Inc. **JD-890-79**

(E which acquired all physical assets of predecessor, engaged in substantially same business operations as formerly engaged in by predecessor, and employed as manager the predecessor's president and principal stockholder, held successor to and *alter ego* of predecessor)

1672 BANKRUPTCY TRUSTEE OR DEBTOR-IN-POSSESSION

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**

(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

1683 STATUTORY EXCLUSIONS FROM EMPLOYER STATUS

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(contention that E operating legal services organization is statutorily exempt from Act as joint E with federal agency, rejected, where governing agency by very terms of statute which created it was removed from Sec. 2(2) exemption and, in any event, E is not joint E with agency)

1683-5000 State or political subdivision

Community Health and Home Care, Inc. **251 NLRB No. 094**

(E providing and administering comprehensive public health nursing and homemaker program to 10-town area in State held agency of towns it serves where E's board of directors is accountable to and appointed by public officials in towns served by the agency and therefore it is a political subdivision and exempt from Bd's jurisdiction)

Vantage Petroleum Corp. **247 NLRB No. 202**

(jurisdiction asserted over E petroleum company's operation of state parkway gas service stations under contract with the state, since state's actual exercise of control over E's operations is not to such degree as to impair E's control over labor relations so as to render E incompetent to bargain efficaciously with a U, nor does E's performance of services for state constitute performance of services intimately related to traditional state functions warranting nonassertion of jurisdiction)

2400 EMPLOYEE (SEE 440-1860 AND 460-5000 for definition OF EMPLOYEE TYPES AND CATEGORIES)

2401 GENERALLY

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

(individuals not deprieved of Ee status notwithstanding also employed by U as organizer)

2401-6700 Entitlement of managerial employees to protection of the Act

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**

(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

2401-6750 Tests for managerial status

2401-6750-3300 Is aligned with management so as to be in potential conflict with fellow employees

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**

(Ee who held title of banquet and sales representative of E hotel but exercised no supervisory authority, held managerial Ee since his duty to monitor performance and seek its correction through supervisory officials placed him in potential conflict with fellow Ees)

2401-6750-6700 Engages in employer's policy making or exercises independent discretion in performance of duties

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

Alco-Gravure, Inc. **249 NLRB No. 137**

(Bd held control monitors and job operators who perform much the same functions in ensuring quality of publications for E engaged in rotogravure printing of newspaper supplements and advertising materials were not supervisors, where they did not exercise real supervisory authority over Ees and did not possess any of usual indicia of supervisory authority; nor were they managerial Ees as they did not exercise judgment and discretion independent of E's established policies and were not involved in formulation, determination, and effectuation of management policies)

Alco-Gravure, Inc. **249 NLRB No. 137**

(Bd held process control supervisor for E engaged in rotogravure printing of newspaper supplements and advertising materials was not managerial Ee, notwithstanding his duties required use of independent judgment and discretion, where he did not exercise such discretion independent of E's established policies or make any managerial decisions as to levels of manpower required for projects)

Permanent Label Corporation **248 NLRB No. 021**

(Ees who exercise some independent judgment based on their technical expertise held technical Ees not managerial)

Carlina Knitting Co., Inc., et al. **JD-321-80**

(although Ee was carried among payroll records of managerial Ees, he was held plant clerical and not managerial Ee, where majority of his time was spent on physical work along with *floor boys* and any orders he gave them was purely of ministerial nature)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**

(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; further, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**

(instructors herein not managerial w/i meaning of *NLRB v. Yeshiva University* but simply Ees, where they have no input into policy decisions and do not engage in management level decision making, and E does not resemble nonprofit *mature* university in that case)

2401-6800 Confidential employee

Kaplan, Sicking, Hessen, Sugarman, Rosenthal

Kaplan, Sicking, Hessen, Sugarman, Rosenthal

Pilgrim Life Insurance Company **249 NLRB No. 140**

(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

Reymond Baking co. **249 NLRB No. 156**

(challenge to ballot of *receptionist/typist/floater* sustained since such Ee acts in confidential capacity to person involved in formulating, determining and effectuating E's labor relations and is therefore confidential Ee)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**

(Ee found not to be confidential Ee and included in unit where she was hired as secretary, did general typing and only small amount of personnel work, including voter eligibility list)

Union College **247 NLRB No. 069**

(secretaries to divisional deans held confidential Ees where they have access to grievance files and E's notes relating to grievances and help with work in connection with labor relations functions of divisional deans)

Hendricks County Rural Electric Membership Corporation **247 NLRB No. 068**

(on ct remand, Bd found under standard erected by ct that Ee was not confidential Ee where she not only did not work in confidential capacity in respect to labor relations matters, but did not perform confidential duties in connection with nonlabor relations or personnel areas)

2401-8700 Foreign nationals or illegal aliens

Actors' Equity Association **247 NLRB No. 172**

(contention that Bd should decline jurisdiction because alleged ULPs affected only a few non-resident aliens, rejected; Bd enforces Act as to all Ees, including aliens, unless regulation of practice involved is properly left to some other sovereign authority)

2414 INDICIA OF EMPLOYEE STATUS

2414-0100 Generally

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. **249 NLRB No. 143**

2414-0100—Cont.

(newspaper carriers found Ees where E has reserved right to control result achieved and also means used in attaining results; factors considered are: substantial control over carriers by district managers, carriers have no proprietary interest, insulated from most economic losses, limited opportunity to significantly increase income)

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

2414-1100 Continuity and regularity of work

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where he was to work on regular basis so long as his work was satisfactory)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

2414-2200 Control and supervision of methods, terms, and conditions of work

Franklin Fouts, d/b/a B

Jurisearch, Inc. **250 NLRB No. 091**
(where E controlled part-time law school graduate's research technique and method of writing of legal memoranda, graduate held Ee rather than independent contractor)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

Exhibitors Film Delivery

N.L.R.B. v. Fugazy Continental Corporation **603 F.2d 214(T) (C.A. 2, 1979)**
(drivers held Ees rather than independent contractors, since, notwithstanding their franchises, they lacked freedom of operation where E set fares and percentage thereof on which their incomes were based, dictated their dress, conduct and types of vehicle, disciplined them for violations, restricted them so that outside business was less profitable, and by its policies rendered their franchises of little continuing value; E was distinguished from driver-formed association which was administrative creature providing facilities and opportunities for a price)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(lessee-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

2414-3300 Right of control, not exercise thereof, is determinative

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**

2414-4400 Control of earning potential by person ordering or directing work

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where E authorized fixed number of hours per assignment, paid hourly rate and set deadlines so that researcher could not increase his income by entrepreneurship and had no capital investment or risk of loss)

N.L.R.B. v. Fugazy Continental Corporation **603 F.2d 214(T) (C.A. 2, 1979)**
(drivers held Ees rather than independent contractors, since, notwithstanding their franchises, they lacked freedom of operation where E set fares and percentage thereof on which their incomes were based, dictated their dress, conduct and types of vehicle, disciplined them for violations, restricted them so that outside business was less profitable, and by its policies rendered their franchises of little continuing value; E was distinguished from driver-formed association which was administrative creature providing facilities and opportunities for a price)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2414-6600 Compensation

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

2414-7700 Pension and retirement plans

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

2414-8800 Contract determination

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where E set terms and conditions of employment unilaterally and had E-Ee relationship rather than contractual one with worker)

2428 CONTINUATION OR LOSS OF EMPLOYEE STATUS

2428-0100 Generally

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

2428-7500 Individuals whose work has ceased as result of nondiscriminatory interruption or termination of employment

Schlegel Oklahoma, Inc. **250 NLRB No. 012**
(discharged Ee found statutory Ee for purposes of finding threat against him and other Ee unlawful)

Valley Rock Products, Inc. **JD-(SF)-285-79**
(individual on leave of absence held Ee and ballot ordered counted, since no evidence employment relationship severed by positive action, where when

applying for leave of absence and at time leave granted individual stated verbally and in writing he intended to return to work after leave, and in letter granting leave E asked to be advised of approximate return date; moreover, individual was never removed from E's rolls and continued to work for E during leave when E was short-handed)

2456 STRIKERS

2456-5000 ULP strikers

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(where unlawful discharge was cause of Ees' picketing)

2456-7500 Sympathy strikers

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**
(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

2456-8300 Replaced economic strikers

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(entitled to reinstatement as positions become available)

2461 Probationary employees

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**
(entitled to same protections and rights under Act as other Ees)

2484 STATUTORY EXCLUSIONS FROM EMPLOYEE STATUS

2484-1200 Any individual employed as an 'agricultural laborer'

2484-1201 Generally

2484-1201-2500 FLSA Sec. 3(f) sole criterion for defining 'agricultural laborer'

Drummond Coal Company **249 NLRB No. 139**
(under Sec. 3(f) of FLSA that Bd employs in determining whether workers are *Ees* or *agricultural laborers* workers engaged in revegetation of mined areas held agricultural laborers notwithstanding products grown on revegetated land is not sold and revegetation mandated by Federal and State statutes, since workers in preparing seedbeds are engaged in cultivation and tillage of soil under Sec. 3(f))

2484-1225 Tests

2484-1225-1200 Totality of situation determines applicability of secondary definition of agriculture

Dairy Fresh Products Co., A Division of Cal-Maine

Dairy Fresh Products Co., A Division of Cal-Maine

2484-1225-8700 Poultry raiser's farmer status

Dairy Fresh Products Co., A Division of Cal-Maine

2484-1250 Activities exempt as agricultural

2484-1250-1200 Landscaping and raising trees

Drummond Coal Company **249 NLRB No. 139**
(under Sec. 3(f) of FLSA that Bd employs in determining whether workers are *Ees* or *agricultural laborers* workers engaged in revegetation of mined areas held agricultural laborers notwithstanding products grown on revegetated land is not sold and revegetation mandated by Federal and State statutes, since workers in preparing seedbeds are engaged in cultivation and tillage of soil under Sec. 3(f))

2484-1250-3300 Egg production and processing

Dairy Fresh Products Co., A Division of Cal-Maine

2484-5000 'Independent contractor'

2484-5033 Indicia of status

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(owner operators of dump trucks held independent contractors where they were paid by hour, mileage or tonnage rates, responsible for entire cost of their enterprises, select jobs want to work on and may hire drivers or subcontract work)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

2484-5033-0100 Generally

Franklin Fouts, d/b/a B

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and sublessees at airport Ees rather than independent contractors, Bd held E's contract with FAA evidenced E-Ee relationship where FAA contract explicitly prohibited E from assigning its exclusive right to pick up passengers at airport, number of drivers testified E never told them their relationship was based on franchise or that they were independent contractors, and E required drivers to comply only with portions of contract that it deemed should be enforced)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and subleasees Ees rather than independent contractors, Bd held control exercised by E over drivers' entrepreneurial opportunities indicated an E-Ee relationship and not an arm's length relationship between two business entities)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and subleasees Ees rather than independent contractors, Bd held E's exercise of discipline over drivers clearly established E's right to control them)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and sublessees Ees rather than independent contractors, Bd held right to unilaterally promulgate and change terms and conditions of employment is itself evidence of right to control manner and means in which services are to be provided as well as absence of arm's-length relationship between two contracting parties)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and subleasees Ees rather than independent contractors, Bd held control exercised by E over drivers' subleasing and sale of their taxicabs indicated E-Ee relationship)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(Ee who instructs other Ees in welding held regular part-time Ee not independent contractor where he had no authority at all and was paid on hourly basis)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

2484-5033-0133 Amount of control reserved by person for whom work is done

Liquid Transporters, Inc. **250 NLRB No. 163**
(permanent sleeper teams who lease their equipment to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as, other drivers for owneroperators who are Ees of E)

Liquid Transporters, Inc. **250 NLRB No. 163**
(owner-operators and their drivers held Ees of interstate common carrier where E maintained single seniority list for *all* drivers, *all* drivers were dispatched by E's dispatcher, *all* drivers were subject to same discipline for failure to comply with E's dispatch procedures and for violation of government regulations and company rules, single grievance committee was available to *all* drivers, and E insured equipment to *all* drivers in conduct of E's business)

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where E authorized fixed number of hours per assignment, paid hourly rate and set deadlines so that researcher could not increase his income by entrepreneurship and had no capital investment or risk of loss)

Jurisearch, Inc. **250 NLRB No. 091**
(where E controlled part-time law school graduate's research technique and method of writing of legal memoranda, graduate held Ee rather than independent contractor)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**

2484-5033-0133—Cont.

(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

Amber Delivery Service, Inc. **250 NLRB No. 016**

Georgia Pacific Corporation **249 NLRB No. 181**
(contrary to *Georgia Pacific Corp.*, 225 NLRB 866 (1976), Bd found truckdrivers to be Ees of *contract carriers* (independent contractors) and not E, since by terms of new agreements between E and contract carriers: (1) carriers and their drivers, rather than E, determined route to use; (2) carriers are no longer required to coordinate their services solely with E's operations; (3) E no longer retained right to subject carriers to all *instructions* concerning time and manner of performing their services; and (4) E did not have right to reject vehicles or drivers which failed to meet E's safety standards)

Bellacicco

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**
(owner-operators and non-owner drivers of leased trucks held Ees of lessee E and not independent contractors or Ees of independent contractors since E maintained extensive control over owner-operators as was demonstrated by E's exclusive possession, control, and use of said leased trucks, E's unilateral determination of owner-operator compensation, display of E's insignia and ICC certification on trucks, and, among other factors, overall effect of degree of control over equipment and personnel required by State and Federal regulations of motor carriers)

Exhibitors Film Delivery

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(lessee-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

2484-5067 Specific operations

2484-5067-2000 Contract drivers

Liquid Transporters, Inc. **250 NLRB No. 163**
(permanent sleeper teams who lease their equipment to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as, other drivers for owneroperators who are Ees of E)

Liquid Transporters, Inc. **250 NLRB No. 163**
(owner-operators and their drivers held Ees of interstate common carrier where E maintained single seniority list for *all* drivers, *all* drivers were dispatched by E's dispatcher, *all* drivers were subject to same discipline for failure to comply with E's dispatch procedures and for violation of government regulations and company rules, single grievance committee was available to *all* drivers, and E insured equipment to *all* drivers in conduct of E's business)

Georgia Pacific Corporation **249 NLRB No. 181**
(contrary to *Georgia Pacific Corp.*, 225 NLRB 866 (1976), Bd found truckdrivers to be Ees of *contract carriers* (independent contractors) and not E, since by terms of new agreements between E and contract carriers: (1) carriers and their drivers, rather than E, determined route to use; (2) carriers are no longer required to coordinate their services solely with E's operations; (3) E no longer retained right to subject carriers to all *instructions* concerning time and manner of performing their services; and (4) E did not have right to reject vehicles or drivers which failed to meet E's safety standards)

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(owner operators of dump trucks held independent contractors where they were paid by hour, mileage or tonnage rates, responsible for entire cost of their enterprises, select jobs want to work on and may hire drivers or subcontract work)

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**
(owner-operators and non-owner drivers of leased trucks held Ees of lessee E and not independent contractors or Ees of independent contractors since E maintained extensive control over owner-operators as was demonstrated by E's exclusive possession, control, and use of said leased trucks, E's unilateral determination of owner-operator compensation, display of E's insignia and ICC certification on trucks, and, among other factors, overall effect of degree of control over equipment and personnel required by State and Federal regulations of motor carriers)

Exhibitors Film Delivery

2484-5067-3500 Delivery drivers

Amber Delivery Service, Inc. **250 NLRB No. 016**
(owner operators held Ees and not independent contractors where E exercised such daily contral as: work load, routes taken, drivers having no proprietary interest in routes, and E's warehouse Ees assisting in loading and unloading; moreover, fact that E does not withhold taxes, provide workmen's compensation, drivers receive no paid holidays, pay cost of own repairs and fuel and contract sets forth that drivers are not Ees is not controlling)

2484-5067-4000 Driver salesmen

Charmer Industries, Inc. **250 NLRB No. 031**
(salesmen working for wholesalers held statutory Ees and not in business for themselves, where U contract lists number of causes for their discharge, Es assign, supervise, and take away from salesmen accounts they are to service, and also establish quotas against which their performance is evaluated)

Bellacicco

2484-5067-6000 Taxicab drivers

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**
(taxicab drivers who leased cabs from E found Ees rather than independent contractors where areas of control over lessee drivers included collection of alleged driver overcharges, use of flat fare rates, requirements that lessees clean their cabs, restrictions on freedom of lessees to refuse to accept assigned runs w/o penalty, restrictions on use of radio, mandate by various laws, enforced by E, violation of which could result in refusal of leases, E's retention of right to end leasing relationship, and E's precluding lessees from allowing others to drive during their lease terms)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(taxicab driver-owners and sublessees at airport held Ees rather than independent contractors, notwithstanding factors indicating independent contractor status, in view of 7 enumerated factors such as E's retention of unilateral control over drivers' revenue by control of fare structure, performance of drivers' services in E's name, E's absolute control over determination of satisfactory performance, and managerial assistance and control at E's taxistand)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

2484-5067-6000—Cont.

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(lessee-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2484-5067-8000 Newspaper carriers

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. **249 NLRB No. 143**

(newspaper carriers found Ees where E has reserved right to control result achieved and also means used in attaining results; factors considered are: substantial control over carriers by district managers, carriers have no proprietary interest, insulated from most economic losses, limited opportunity to significantly increase income)

2484-5067-8500 Day care centers

Rosemount Center **248 NLRB No. 163**

(home mothers employed by child day care facility, who provide day care services in their homes, held Ees, rather than independent contractors, in view of E's control over their work conditions and environment)

2484-5067-9400 Musicians

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**

(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

3200 'REPRESENTATIVE'

3900 'LABOR ORGANIZATION'

3925 PREREQUISITES

3925-4000 Purpose of dealing with employers with regard to employee working conditions

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(committee of representatives elected by Ees from three of E's departments to present their grievances to E's representatives held labor organization)

Streamway Division of The Scott

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South Nassau Communities Hospital **247 NLRB No. 067**

(*Nursing Advisory Committee* participated in by Ees and which dealt with E concerning Ees' grievances and conditions of employment held to have been *labor organization* notwithstanding Committee was also concerned with hospital administration and professional matters not related to wages, hours and working conditions)

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**

(unaffiliated Ee association consisting of 10-member grievance committee with elected spokesperson but no officers, constitution, by-laws, or membership rolls, which was formed for collective bargaining purposes and has met and bargained with E concerning Ees' working conditions since its formation and which has notified Ees of and held meetings that they attended where minutes were kept, held labor organization)

3950 TYPES OF LABOR ORGANIZATIONS

3950-2700 Employee committees, medical interns' associations, etc.

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(committee of representatives elected by Ees from three of E's departments to present their grievances to E's representatives held labor organization)

South Nassau Communities Hospital **247 NLRB No. 067**

(*Nursing Advisory Committee* participated in by Ees and which dealt with E concerning Ees' grievances and conditions of employment held to have been *labor organization* notwithstanding Committee was also concerned with hospital administration and professional matters not related to wages, hours and working conditions)

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**

(unaffiliated Ee association consisting of 10-member grievance committee with elected spokesperson but no officers, constitution, by-laws, or membership rolls, which was formed for collective bargaining purposes and has met and bargained with E concerning Ees' working conditions since its formation and which has notified Ees of and held meetings that they attended where minutes were kept, held labor organization)

3950-7700 Organizations subject to influence, domination or control by supervisors

Abington Memorial Hospital **250 NLRB No. 098**

(state-wide nurses' association in which Ees participate and which exists, at least in part, for purpose of representing its members in collective bargaining held labor organization, even though supervisors hold leadership positions in organization)

N.T. Enloe Memorial Hospital **250 NLRB No. 078**

(in unit of Ees represented by association which admitted supervisors to membership, there is no conflict of interest which would disqualify association as bargaining representative where one unit member is supervisor but is not engaged in collective bargaining)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**

(Nurses' Association held labor organization not disqualified to represent E's Ees, even assuming that competitive relationships existed between E and other area hospitals, where there was no showing of conflict of interest between influence w/i Association of supervisor-members employed by competing hospitals and Association's capacity to represent E's Ees; presence alone of third-party supervisors in Association is not sufficient, since Bd will not assume any *inherent* conflict of interest between supervisors and Ees in bargaining process; see also Oak Park Community Hospital, 249 NLRB No. 120)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**

(Nurses' Association held labor organization not disqualified to represent E's Ees; Ees' interest in R is not affected adversely by Association's rendering of personal employment-related assistance to one of their supervisor-members inasmuch as members of Accoaition's bargaining commission exercise individual discretion both as to whether to assist supervisor and as to form such assistance should take, and E is able independently to determine whether supervisor so indebted to U should be assigned to bargain on its behalf with such U; see also *Oak Park Community Hospital,* 249 NLRB No. 120)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**

(Nurses' Assoc. held labor organization not disqualified to represent E's Ees, notwithstanding E's contention that specified supervisors, officials of Assoc. and employed by other hospitals, could influence to an impermissible degree bargaining between E and Assoc., since all bargaining responsibilities of Assoc. reside w/i Assoc.'s commission all of whose members are nonsupervisory nurses, bargaining on local level is conducted by elected Ee bargaining committee, and there was no reasonable likelihood that specified supervisors could meaningfully affect bargaining between E and Assoc.)

Sierra Vista Hospital, Inc. **249 NLRB No. 066**

(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflict of interest under *Sierra Vista,* 241 NLRB No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

Exeter Hospital **248 NLRB No. 056**

(nurses association which included supervisors in leadership positions found to be unqualified to represent Ees since there was clear and present danger of conflict of interest which would interfere with collective bargaining process)

Healdsburg General Hospital **247 NLRB No. 030**

(nurses association held labor organization and not disqualified from acting as Ee representative on ground association is subject to control of supervisors who are permitted to be members, since (1) there was no evidence E's supervisors belonged to association, and Bd will not resort to speculation about posibility, as claimed by E, that supervisors might join at some future time, and (2) E failed to meet *heavy burden* of showing *direct* conflict of interest because of possible relation between E and Es of supervisors participating in bargaining process)

Healdsburg General Hospital **247 NLRB No. 030**

(nurses association held labor organization and not disqualified from acting as Ee representative on ground that association is subject to control by supervisors who are permitted to be members; even assuming that association is influenced by supervisors, that association represents *all* nurses

3950-7700—Cont.

including supervisors, and that such representation is costly and controversial, Bd held E failed to establish that any of these factors create conflict of interest sufficient to prevent association from acting as Ee representative)

Sidney Farber Cancer Institute **247 NLRB No. 001**

3975 SUCCESSOR LABOR ORGANIZATIONS

Wellman Industries, Inc. **248 NLRB No. 029**
(U consisting of two merged labor organizations found successor to one of merged Us as continuation of old U under new name with continuity of representation and no change in operations found successor)

3987 EFFECT OF DISAFFILIATION, AFFILIATION, OR MERGE

Wellman Industries, Inc. **248 NLRB No. 029**
(U consisting of two merged labor organizations found successor to one of merged Us as continuation of old U under new name with continuity of representation and no change in operations found successor)

4700 'COMMERCE'

5500 'AFFECTING COMMERCE'

Actors' Equity Association **247 NLRB No. 172**
(contention that Bd should decline jurisdiction because alleged ULPs affecting only a few non-resident aliens had no significant effect on commerce, rejected; in exercising its jurisdiction, Bd looks to impact of E's operations on commerce and does not attempt to measure impact of specific ULPs alleged, unless they are de minimis)

6200 'UNFAIR LABOR PRACTICE'

7000 'LABOR DISPUTE'

7067 STRIKE

7067-3300 Economic strike

Redlands Christian Migrant Association **250 NLRB No. 027**
(strike over alleged unfavorable working conditions)

Excavation-Construction, Inc. **248 NLRB No. 081**
(discharge of Ees who participated in 1-day work stoppage in support of U's bargaining position violated Act as this is strike and not *intermittent work stoppage* which would be unprotected)

7067-3350 Conversion to ULP strike

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(economic strike converted to ULP strike when E refused to bargain in good faith by insistence on contract termination date coincidental with certification year)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(although Ees' strike in support of U demand that their lawfully discharged co-Ees be returned to work was economic strike, it was converted to ULP strike by E's unlawful discharge of economic strikers for not abandoning strike)

Harding Glass Industries **248 NLRB No. 091**
(unlawful withdrawal of member from E-association during negotiations converted economic strike to ULP strike)

7067-6700 Unfair labor practice strike

O.K. Machine

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(picketing which was precipitated by ULPs not ULP strike since Ees did not withhold services)

Excavation-Construction, Inc. **248 NLRB No. 081**
(strike caused in part by E's institution of unilateral change in terms of employment)

B. N. Beard Company **248 NLRB No. 016**
(strike caused by E's failure to make payments to welfare and pension funds required under contracts with Us held ULP strike; failure to comply with notice and strike deferral provisions of Sec. 8(d) held not to make strike illegal since Sec. 8(d) is not applicable to ULP strike)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(ULP strike where caused and prolonged by E's unlawful threats and discharges)

Andersen Sand

Mather Federal Credit Union **JD-(SF)-8-80**
(fact that Ees who protested E's ULPs also expected to put economic pressure upon E and thereby obtain acceptable contract held not to lessen their rights as ULP strikers)

7067-6750 Causal relation of ULP must be shown

Climate Control Corporation **251 NLRB No. 102**

Carterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) 8250 NLRB 089
(strike in protest of E's unlawful action in unilaterally changing transfer request system affecting voluntary demotion, held ULP strike from its inception)

Burns Motor Freight, Inc. **250 NLRB No. 045**
(strike held ULP strike notwithstanding it commenced several months after ULPs, where ULPs were unremedied at time of strike and E's refusal to bargain continued)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

Amber Delivery Service, Inc. **250 NLRB No. 016**
(strike called over lawful Ee discharges not ULP strike notwithstanding E committed other ULPs at same time as no causal relationship existed between strike and ULPs)

Cable Vision, Inc. **249 NLRB No. 062**
(where picket signs used during strike noted there was ULP charge and bargaining in bad faith, E's conduct, found unlawful herein, caused strike and therefore was ULP strike)

Lucy's, Inc. **JD-832-79**
(strike held ULP strike, notwithstanding presence of economic issues, where Ees were apprised of E's ULP conduct before engaging in strike)

7800 'NATIONAL LABOR RELATIONS BOARD'

8500 'SUPERVISOR'

8501 GENERALLY

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(possession of any one of enumerated powers set forth in Sec. 2(11) of Act establishes supervisory status)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(supervisory functions listed in Section 2(11) read in disjunctive and existence of any one of the functions sufficient to confer supervisory status)

8501-2000 Existence of statutory power controlling

Gurabo Lace Mills, Inc. **249 NLRB No. 093**
(if Ee possesses any one of supervisory criteria of Sec. 2(11) of Act he will be found supervisor as balancing test is not used to determine supervisory status)

8501-4000 Functions, duties, and authority, rather than titles significant

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(individual held not supervisor absent evidence of supervisory authority, notwithstanding he was referred to as supervisor and on occasion introduced to new Ees as supervisor since *supervisory status may not be determined on basis of title alone, but upon application of Section 2(11) standards*)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**
(individual designated *night acting manager* at food stand held not supervisor, notwithstanding cousin of owner, where he performed same duties as countermen most of shift, compensation less than that of some individuals in unit, only responsibility associated with title was counting of receipts and locking of doors; further, individual had hired only one person which was reviewed by management, and had no control over wages or scope of work of person hired, nor is his expressing displeasure when co-workers did not perform their share of duties)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**
(individual designated *night acting manager* at food stand held not supervisor, notwithstanding cousin of owner, where he performed same duties as countermen most of shift, compensation less than that of some individuals in unit, only responsibility associated with title was counting of receipts and locking of doors; further, individual had hired only one person which was reviewed by management, and had no control over wages or scope of work of person hired, nor is his expressing displeasure when co-workers did not perform their share of duties)

8520 INDICIA OF SUPERVISORY STATUS

8520-0800 Authority to hire, discipline, assign, etc.

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same

8520-0800—Cont.

benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(leadmen held supervisors, notwithstanding little opportunity to exercise their authority to hire, fire, or discipline Ees; furthermore, E placed leadmen in strategic position where Ees could reasonably believe that they speak on E's behalf)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(sole group leader in department held supervisor where she trains Ees, corrects their work, adjusts Ee grievances, approves overtime, grants time off, reassigns Ees to different work areas and issues oral warnings, notwithstanding she lacks authority to hire, fire, promote or grant wage increases)

Commercial Testing

Leyendecker Paving, Inc. **247 NLRB No. 010**
(although Ee at highway and construction company worked with his hands, supervisory status was found where Ee was paid substantially greater wages than rest of his crew, drove company truck, had power to authorize overtime work, recommended wage increases, assigned or transferred jobs based on his discretion, had authority to discipline and conceded his job was similar to admitted supervisor)

8520-1600 Power 'effectively to recommend'

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(supervisor, despite E's denial that individual was or is supervisor)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(although Ee could not take final action as to hiring, firing, or granting wage increases, Ee was able to effectively recommend such actions, and thus be considered supervisor)

8520-2400 Responsible direction

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

8520-3200 Training, instruction and inspection functions

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**

8520-3900 Adjustment of grievances

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**

8520-4700 'Independent judgment' in exercise of authority

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(group leaders who possessed authority to adjust grievances, issue oral warnings, grant overtime, initial timecards, grant time off, reassign Ees to different work areas, enforce E's rules regarding safety, monitor abuse of coffee breaks and restroom priveleges and required to exercise independent judgment in performance of duties)

8520-6200 Substitution for supervisor

McKesson

N.L.R.B. v. Andrea Associates, a joint venture d/b/
a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

8520-7000 Ostensible authority

467 East Gilbert Street Corporation d/b/a Medical
Center Convalescent Hospital **247 NLRB No. 074**
(Ee found to be supervisor w/i meaning of Act; and assuming, *arguendo*, that she was not, she had held herself out to other Ees as agent of E)

N.L.R.B. v. Andrea Associates, a joint venture d/b/
a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

8520-7800 Ratio to supervised employees

J. J. Newberry Co., A Wholly Owned Subsidiary of
McCrory Corporation **249 NLRB No. 126**
(clerical found member of unit and eligible to vote where her duties are of routine nature and Ees who work with her require no direction; moreover since only 2 Ees work with her it would result in unrealistic supervisor/Ee ratio)

8520-8500 Training for supervisory positions

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(individual held supervisor and interrogation imputed to E where E had announced individual was soon to be supervisor and she assumed increasingly supervisory functions of interviewing and screening applicants, developing productivity rating system, instructing Ees and setting priorities)

8520-9200 Unless found supervisor, shop without supervisor

Sumco Manufacturing Co., Inc. Summit Grinding
Company **251 NLRB No. 046**

Comfort Health Corporation d/b/a Kendallville
Nursing Home **JD-329-80**
(*relief charge aide* on shift at nursing home held supervisor where had authority to discipline and if not supervisor home would be w/o supervisor for several hours each day)

International Union of Elevator Constructors, Local
No. 16 (Otis Elevator Company) **JD-183-80**
(construction foreman, also designated mechanic-in-charge, engaged in elevator construction at jobsite)

8540 TYPES OF EMPLOYEES FOUND SUPERVISORY (BY SIC)

8540-1600 Construction other than building construction - general contractors

Leyendecker Paving, Inc. **247 NLRB No. 010**
(although Ee at highway and construction company worked with his hands, supervisory status was found where Ee was paid substantially greater wages than rest of his crew, drove company truck, had power to authorize overtime work, recommended wage increases, assigned or transferred jobs based on his discretion, had authority to discipline and conceded his job was similar to admitted supervisor)

8540-1700 Construction - special trade contractors

Don Pizzolato, Inc. **249 NLRB No. 136**
(salaried Ee who assigned work to other Ees, supervises their performance, reprimands them, recommends change in employment conditions, hiring, pledges firm's credit, in charge when E absent, has keys to office and no other officers or supervisors exist held supervisor)

International Union of Elevator Constructors, Local
No. 16 (Otis Elevator Company) **JD-183-80**
(construction foreman, also designated mechanic-in-charge, engaged in elevator construction at jobsite)

8540-2000 Food and kindred products

Pacific Coast International Meat Co. **248 NLRB No. 183**
(foremen in steakcutting and wrapping subdivision of E engaged in meat processing where they attended production meetings, informed Ees of need for overtime and initialed time cards, were paid at higher rate and received benefits not available to rank and file Ees, interviewed job applicants and made recommendations notwithstanding independently reviewed)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(leadmen held supervisors, notwithstanding little opportunity to exercise their authority to hire, fire, or discipline Ees; furthermore, E placed leadmen in strategic position where Ees could reasonably believe that they speak on E's behalf)

8540-2200 Textile mill products

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(head packer at yarn producing facility)

Gurabo Lace Mills, Inc. **249 NLRB No. 093**
(Ee found supervisor, not leadman, where he was responsible for daily assignment of jobs, assisted Ees with problems, made Ee reassignments, adjusted grievances, interviewed prospective Ees; moreover, fact that he was only Spanish speaking person in authority caused E to rely heavily on his hiring recommendations)

8540-2600 Paper and allied products

Nice-Pak Products, Inc. **248 NLRB No. 173**
(leadperson on day shift found supervisor on other shifts where she assumed supervisory authority in absence of supervisors)

8540-2700 Printing, publishing, and allied industries

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(*working foreman at newsprint warehouse held supervisor where he selected job applicants for hire, unilaterally determined overtime for other Ees; effectively recommended an Ee's transfer and implemented straight time* plan for reducing E's payroll expenses)

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. **249 NLRB No. 143**
(district managers who have authority to hire, discharge, assign, transfer and responsibly direct newspaper carriers who have been found to be Ees held supervisors)

8540-2800 Chemicals and allied products

Avon Products, Inc. **250 NLRB No. 141**
(representative service department auditor/trainees at cosmetics manufactuere's branch operation found supervisory Ees where they are responsible for training team members and overseeing their work and that of team correspondents to enforce proper procedures and guidelines)

8540-3200 Stone, clay, glass, and concrete products

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(individual in window fabrication division of manufacturer of windows and glass walls for office and apartment buildings held supervisor and ineligible to vote where he disciplined and corrected work of others, gave permission to leave work early, had overall responsibility for production in division and in view of vast difference in earnings from other individuals; further, if not held supervisor floor would be w/o supervisor)

8540-3400 Fabricated metal products, except machinery and transportation equipment

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(second shift foreman at manufacturer of automobile jacks found supervisor where he was only foreman on second shift which had some 12 Ees, and assigned Ees to jobs)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(packaging foreman at manufacturer of automobile jacks found supervisor where she was represented to Ees as *boss*, did written evaluations on Ees, granted Ees time off, had authority to impose minor discipline w/o necessarily having right to discharge or recommend their discharge, and normally determined what person to assign to which job, thus exercising independent judgment based on her knowledge of abilities of persons involved)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(Ee at metal fabricating plant who on day shift is rank-and-file Ee held supervisor on night shift because when on night shift he has complete charge of shift in every respect)

8540-3500 Machinery, except electrical

Dixon Industries, Inc. **247 NLRB No. 185**
(three leadmen in different departments of manufacturer of lawn moving equipment held supervisors, where one exercised independent judgment in training instruction, inspection, assignments, transfers, and quota fulfillment; another in scheduling work; and all in daily production process)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(Ee who assigned jobs to other Ees, selected Ees to perform jobs, designated particular jobs as rush found supervisor and not eligible to vote in election)

8540-3600 Electrical and electronic machinery, equipment, and supplies

Simpson Electric Company, a Division of American Gage

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(group leaders who possessed authority to adjust grievances, issue oral warnings, grant overtime, initial timecards, grant time off, reassign Ees to different work areas, enforce E's rules regarding safety, monitor abuse of coffee breaks and restroom priveleges and required to exercise independent judgment in performance of duties)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(sole group leader in department held supervisor where she trains Ees, corrects their work, adjusts Ee grievances, approves overtime, grants time off, reassigns Ees to different work areas and issues oral warnings, notwithstanding she lacks authority to hire, fire, promote or grant wage increases)

8540-3700 Transportation equipment

Neckover Trailer Manufacturing Company **JD-256-80**
(assistant personnel manager at livestock trailer manufacturing plant)

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(Ee who corrected errors on time cards, granted Ees time off from work found supervisor where, if she were not, E would have only 1 supervisor for 140 Ees in 4-storey plant)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(*leadman* employed in fiberglass department of camper tops manufacturer held *supervisor* where he possessed and exercised authority to hire and fire Ees, responsibly directed work of Ees in his department and granted Ees time off)

8540-3900 Miscellaneous manufacturing industries

Hedison Manufacturing Company **249 NLRB No. 096**
(floorlady at costume jewelry manufacturing plant)

8540-4200 Motor freight transportation and warehousing

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(dock foreman at E engaged in transporting foods found supervisor where he had authority to hire and fire, did not do physical labor but instructed warehousemen, did paperwork, and handled grievances from Ees)

Commercial Carriers, Inc. **JD-136-80**
(*yard supervisor* at E engaged in shipping newly manufactured cars)

York Cold Storage **251 NLRB No. 054**
(Ee held supervisor and challenge to his ballot sustained, where he was classified as supervisor of warehouse for cold storage firm, before he was hired no one was classified as supervisor for this particular warehouse, other Ees were advised of his supervisory authority and were directed to take orders from him, and although he spent 50% of his time performing unit work, remainder of time was spent overseeing work of two or three Ees at warehouse; he had authority to reprimand Ees, request replacements if he felt Ees were incapable of handling work and could recommend raises)

8540-4700 Transportation services

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(taxicab driver-owners who subleased their vehicles to other drivers and, in subleasing their vehicles, participated in hiring, firing and setting of wages and other terms and conditions of employment)

8540-5000 Wholesale trade - durable goods

Battery Bill, Inc. **249 NLRB No. 030**
(individual at E engaged in retail and wholesale of batteries where he approved leaves, participated in and made effective reconmendations as to raises and hiring)

Battery Bill, Inc. **249 NLRB No. 030**
(*technical advisor* at E engaged in wholesale and retail sale of batteries where he effectively participated in employment of Ees)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ct upheld Bd's determination that individual who was *day warehouse foreman* at wholesale distributor of building and flooring materials supervisor where individual had exercised independent judgment in performance of his duties at least once, where he reassigned Ees in order to cover for ill Ees; existence of any one of functions listed in Section 2(11) sufficient to confer supervisory status thus Bd's decision had reasonable basis in law, notwithstanding individual had no authority to hire, promote or discharge Ees or even to recommend such actions and had voted in election w/o challenge)

Battery Bill, Inc. **249 NLRB No. 030**
(*technical advisor* at E engaged in wholesale and retail sale of batteries where he effectively participated in employment of Ees)

Battery Bill, Inc. **249 NLRB No. 030**
(individual at E engaged in retail and wholesale of batteries where he approved leaves, participated in and made effective reconmendations as to raises and hiring)

8540-5400 Food stores

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**

8540-5400—Cont.

(Ee who was in charge of meat department, directed work of 3 Ees, determined conditions of employment, recommended wage increases and issued reprimands for deficient work held supervisor)

8540-5900 Miscellaneous retail

Colorfax Laboratories, Inc. (Retail Store Employees Union Local 400) **248 NLRB No. 068**
(store managers of E engaged in providing photographic processing, printing and related services to professional photographers through retail outlets, held supervisory, where each store manager provides Ees under him with all requisite training, directs Ees in their duties, sets Ees' hours of work, and may, w/o prior approval and at his or her discretion, instruct Ees to work overtime)

8540-6300 Insurance

Pilgrim Life Insurance Company **249 NLRB No. 140**
(individual in charge of IBM room at insurance company who trained new Ees, participated in hiring interviews, recommended Ees for raises, and was represented to Ees as supervisor)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(*group claims manager* at insurance company who was represented by E to Ees as supervisor, authorized to assign work, reviewed and corrected work of Ees, and whose earnings exceeded those of other clericals)

8540-7000 Hotels, rooming houses, camps, and other lodging places

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(*executive housekeeper* and *assistant executive housekeeper* at motel held supervisors, and alleged threats to them thus not violative, where they recommended hiring, were authorized to suspend Ees, assigned, checked, and evaluated work of Ees)

8540-7800 Motion pictures

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(sound mixer on production of film found lacking supervisory authority where he did not possess actual authority to hire, fire, or discipline; recommendation regarding hiring of coworker was subject to independent investigation and final decision by others)

8540-8000 Health services

8540-8050 Nursing and personal care facilities

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(*relief charge aide* on shift at nursing home held supervisor where had authority to discipline and if not supervisor home would be w/o supervisor for several hours each day)

8540-8060 Hospitals

Exeter Hospital **248 NLRB No. 056**
(charge nurses held supervisors since they were responsible for preparing work schedules of Ees in their respective units and evaluating Ees for merit pay increases, and had authority to entertain grievances and to discipline Ees)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(head nurses at acute care monprofit hospital)

8540-8200 Educational services

Trustees of Tufts College **251 NLRB No. 108**
(accounts payable supervisor excluded from unit where she directs work of 4 Ees, with authority to excuse them from work, verbally discipline them, recommend written warnings, assign work, settle work disputes and grievances, evaluate Ees and also attends supervisors meetings)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; farther, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

8560 INDICIA OF NONSUPERVISORY STATUS

8560-1000 Routine direction derived from skill and experience

Central Freight Lines, Inc. **250 NLRB No. 063**
(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(Ee in charge of cash room found not supervisor but lead person where nature of work routine and additional responsibility arose from experience and familiarity with E's operations)

Judd Valve Co., Inc. **248 NLRB No. 018**
(leadman not supervisory where, because of his expertise, he was relied on by E to lend technical assistance to fellow Ees)

American Diversified Foods, Inc. **247 NLRB No. 009**
(shift managers of fast food restaurant found non supervisory personnel in light of fact that as senior Ees they were familiar with store's operational routine, helped counter Ees work smoothly in cooperative rather than controlling manner, performed same work functions as counter Ees, worked regular shifts. Shift managers were at most lead-men who had no role in formulating or affecting management policy)

8560-1500 Lack of authority to hire, discipline, assign, etc.

Central Freight Lines, Inc. **250 NLRB No. 063**
(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**

8560-1800 Prospect of being promoted to supervisor

Sylvester's Corp.; d/b/a Gene Sylvester Alarm Co.; et al. **249 NLRB No. 161**
(challenge to ballot of former supervisor overruled where Ee, initially returned to do unit work to complete complex installation but since then has performed on other jobs as well though he has not exercised any supervisory authority whatsover, E has not informed Ees of former supervisor's change in status and installation not yet completed)

8560-2500 Performance of duties once performed by supervisor

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

8560-4000 Relaying of orders and information; assignment of work

Judd Valve Co., Inc. **248 NLRB No. 018**
(leadman at check valve manufacturing plant, who acts as conduit to management, not supervisory)

8560-5000 Limited or sporadic exercise of supervisory power

Judd Valve Co., Inc. **248 NLRB No. 018**
(insufficient to establish leadman as supervisor)

8560-7000 Training, instruction and inspection functions

Permanent Label Corporation **248 NLRB No. 021**
(Ees who exercise some independent judgment based on their technical expertise held technical Ees not managerial)

8560-9000 Recommendations reviewed by supervisors

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**

8580 TYPES OF EMPLOYEES FOUND NONSUPERVISORY (BY SIC)

8580-1600 Construction other than building construction - general contractors

Stafford Construction Co. **250 NLRB No. 128**
(*grade checker* found nonsupervisory where he works as assistant to foreman, does not assign operators to equipment, never had any supervisory authority and unlike foreman is hourly paid)

8580-2200 Textile mill products

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(utility and air conditioning mechanic at yarn producing facility)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(section men at yarn producing facility)

8580-2500 Furniture and fixtures

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**

8580-2500—Cont.

(shipping clerk of furniture manufacturing company, held nonsupervisory Ee)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(shipping clerk of furniture manufacturing company, held nonsupervisory Ee)

8580-2700 Printing, publishing, and allied industries

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(assistant foreman at newspaper held not supervisor notwithstanding facts that he sometimes acted as foreman in absence of foreman, including filling in for him at management meetings, occasionally authorized overtime w/o checking with anyone else and took it upon himself to go and secure late copy from reporters, where his activities as supervisor were performed on sporadic basis; he never granted time off, had no authority to either hire or fire or to recommend same, or to rate or evaluate Ees, or to suspend them or even to reprimand and was not regarded by other Ees as boss)

Alco-Gravure, Inc. **249 NLRB No. 137**
(Bd held control monitors and job operators who perform much the same functions in ensuring quality of publications for E engaged in rotogravure printing of newspaper supplements and advertising materials were not supervisors, where they did not exercise real supervisory authority over Ees and did not possess any of usual indicia of supervisory authority; nor were they managerial Ees as they did not exercise judgment and discretion independent of E's established policies and were not involved in formulation, determination, and effectuation of management policies)

Print-O-Stat, Inc. **247 NLRB No. 047**
(*gang leaders* in production departments at printing plant, since performance of their duties did not require exercise of independent judgment, but rather they functioned essentially as senior experienced lead personnel and their direction of other Ees was dictated solely by demands of each production job, notwithstanding they had authority to grant time off, assign Ees to work overtime, and make job assignments)

8580-3000 Rubber and miscellaneous plastics products

Permanent Label Corporation **248 NLRB No. 021**
(floor lady position which was purely routine and involved no exercise of discretion not supervisory)

8580-3800 Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks

Brooks Cameras, Inc. **250 NLRB No. 116**
(warehouse clerk in charge of receiving at warehouse of retailer of cameras and photographic equipment, not supervisory where he lacked authority to hire, fire, discipline, grant time off or schedule work assignments, exercised independent judgment only once, and, although second most senior of all warehouse Ees, he was paid less than truck drivers)

8580-3900 Miscellaneous manufacturing industries

Hedison Manufacturing Company **249 NLRB No. 096**
(plant nurse at costume jewelry manufacturing plant)

8580-4200 Motor freight transportation and warehousing

Tri-State Motor Transit Company **251 NLRB No. 144**
(dispatcher at freight transportation company held nonsupervisory where he associated with Ees as fellow Ee, sometimes did rank-and-file yard work, and only assignment of work to Ees was of sporadic and routine nature, in connection with duties as dispatcher; any direct action, so far as Ees were concerned, could be taken only after clearance with terminal manager or company headquarters)

Central Freight Lines, Inc. **250 NLRB No. 063**
(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(leadmen at E engaged in transporting foods found not to be supervisors where they had no true discretion, performed physical labor 90 to 100% of time, were expected to move same amount of freight with other Ees, and voted as unit Ees in prior Bd election w/o objection from E)

8580-4800 Communication

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**
(individual who identified herself as *office manager* at E engaged in installation and servicing of cable television systems since she lacked authority to direct Ees or to effectively recommend hires, nature of work routine and individual's authority at most was that of leadman, some clericals were hired w/o any consultation with individual and consultation in other cases brief and informal)

8580-4900 Electric, gas, and sanitary services

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

8580-5100 Wholesale trade - nondurable goods

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(*lead person* at E engaged in packing and wholesale distribution of meat since she possessed no true supervisory authority notwithstanding suggested names for possible hiring and went over orders to make sure things were cleaned up at end of day and could allow persons to leave during day)

8580-5300 General merchandise stores

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(clerical found member of unit and eligible to vote where her duties are of routine nature and Ees who work with her require no direction; moreover since only 2 Ees work with her it would result in unrealistic supervisor/Ee ratio)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(Ee in charge of cash room found not supervisor but lead person where nature of work routine and additional responsibility arose from experience and familiarity with E's operations)

8580-5800 Eating and drinking places

American Diversified Foods, Inc. **247 NLRB No. 009**
(shift managers of fast food restaurant found non supervisory personnel in light of fact that as senior Ees they were familiar with store's operational routine, helped counter Ees work smoothly in cooperative rather than controlling manner, performed same work functions as counter Ees, worked regular shifts. Shift managers were at most lead-men who had no role in formulating or affecting management policy)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**
(individual designated *night acting manager* at food stand held not supervisor, notwithstanding cousin of owner, where he performed same duties as countermen most of shift, compensation less than that of some individuals in unit, only responsibility associated with title was counting of receipts and locking of doors; further, individual had hired only one person which was reviewed by management, and had no control over wages or scope of work of person hired, nor is his expressing displeasure when co-workers did not perform their share of duties)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**
(individual designated *night acting manager* at food stand held not supervisor, notwithstanding cousin of owner, where he performed same duties as countermen most of shift, compensation less than that of some individuals in unit, only responsibility associated with title was counting of receipts and locking of doors; further, individual had hired only one person which was reviewed by management, and had no control over wages or scope of work of person hired, nor is his expressing displeasure when co-workers did not perform their share of duties)

Dick Seidler Enterprises, d/b/a Joe

8580-6300 Insurance

Pilgrim Life Insurance Company **249 NLRB No. 140**
(individual in charge of *office pays* at insurance company who punched time clock, was paid time and half for overtime, and received same benefits as others in department, had never recommended that any Ee be disciplined, fired, or hired, and absent evidence she could effectively recommend such actions or that she directed work of Ees in any way)

8580-7000 Hotels, rooming houses, camps, and other lodging places

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(electrician who for 10 months prior to his discharge was *supervisor* in maintenance department of E hotel, held nonsupervisory Ee, where his direction of Ees was of no more than routine nature or required no exercise of independent judgment)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(food clerk who maintains food and beverage inventories in E hotel's storerooms, held not supervisor or agent w/i meaning of Section 2(11) of Act)

8580-7900 Amusement and recreation services, except motion pictures

Magic Mountain Corporation **JD-337-80**

8580-7900—Cont.

(ski patrol member at ski resort, held to be not supervisor, where he enjoyed no special privileges as an assistant patrol leader, shared same working conditions with 4 other ski patrol members, had higher pay resulting from his seniority on patrol, never disciplined any Ee, and had no authority to hire, discharge, suspend, promote, grant time off, or to effectively recommend such actions)

9300 'PROFESSIONAL EMPLOYEES'

9301 GENERALLY

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

9350 FOUND PROFESSIONAL

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(non-degree lab technician found professional Ee and excluded from unit where he has same supervision, performs same functions as degree technicians and is considered responsible technologist by E)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*designer* at manufacturer and distributor of children's clothing excluded from unit of production and maintenance Ees and ineligible to vote since professional Ee)

9700 HEALTH CARE INSTITUTIONS

9799 Other

Barclay Hospital, Inc. **247 NLRB No. 144**
(medical school at private university held not health care institution where medical school's primary purpose is to educate rather than to provide medical services to community; although medical school's clinical programs involved treatment of patients, such programs were auxiliarly to fulfillment of medical school's primary educational mission)

Trustees of University of Pennsylvania **247 NLRB No. 132**
(medical school at private university held not health care institution where medical shcool's primary purpose is to educate rather than to provide medical services to community; although medical school's clinical programs involved treatment of patients, such programs were auxiliary to fulfillment of medical shcool's primary educational mission)

Albert Einstein College of Medicine of Yeshiva University **247 NLRB No. 070**
(medical college which provided *education and health services*, held not health care institution under Section 2(14) of Act, since primary purpose was to train physician's and to promote research and not to provide medical services to community, See *Albany Medical College*, 239 NLRB No. 106)

188 AUTHORITY AND STRUCTURE OF NLRB AS AGENCY

0100 GENERALLY

2000 ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS

4000 RELATIONSHIP TO OTHER GOVERNMENTAL AGENCIES

6000 THE BOARD

6033 AUTHORITY UNDER STATUTE

6033-6000 Prescribe remedies

6033-6001 Generally

Ace Beverage Co. **250 NLRB No. 066**
(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

6033-8000 Rulemaking authority

6033-8001 Generally

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**
(substantive agency regulations--those that *affect individual rights and obligations*--have *force and effect of law* if grant of authority by Congress contemplates regulations issued, meet any limitations so imposed by Congress, and promulgation of such regulations must conform with any procedural requirements imposed by Congress)

6067 DELEGATION OF AUTHORITY

6067-2000 To Board panel

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(in rejecting contention that Bd's post-election review of campaign objections was arbitrary and capricious, ct found statutorily permissible procedure where Bd delegates any or all of its powers to three member panels of Bd members and Bd has wide discretion in setting standards for conduct of representation election; furthermore, Bd members themselves and not staff assistants made decision whether to review RD's decision concerning election)

6067-8000 To General Counsel

Ace Beverage Co. **250 NLRB No. 066**
(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

8000 THE GENERAL COUNSEL

8001 GENERALLY

Ace Beverage Co. **250 NLRB No. 066**
(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

8033 STATUTORY AUTHORITY

8033-3300 Final authority to investigate charges and issue complaints

8033-3375 Dismissal of charge not reviewable by courts

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct. IL**
(GC's refusal to issue complaint based upon alleged ULPs, not violation of constitutional right, and hence district ct lacked subject matter jurisdictio to review GC's refusal)

200 NLRB JURISDICTION

201 GENERALLY

3300 POLICY OF BOARD

Alstate Coin Machine Co., Inc. **JD-(SF)-272-79**
(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

6700 EFFECT OF PRIOR DECISIONS

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

8300 TIMELINESS OF RAISING ISSUE

220 STATUTORY JURISDICTION

0100 GENERALLY

0150 INCUMBENT ON BOARD TO ESTABLISH LEGAL JURISDICTION AS AUTHORITY TO PROCEED

Margate Bridge Company **247 NLRB No. 205**
(when legal jurisdiction has been established and some relevant standard for assertion of jurisdiction has been met, immaterial that jurisdiction might be asserted under one of several different standards)

2500 PREEMPTION OF JURISDICTION OVER SUBJECT MATTER REGULATED BY ACT

2525 BOARD HAS EXCLUSIVE JURISDICTION IN ENFORCING ACT

2525-6000 Board jurisdiction not ousted because suit also arises under section 301(a)

2525-6075 Board without original jurisdiction to enforce bargaining contract violations not constituting ULP's

Alstate Coin Machine Co., Inc. **JD-(SF)-272-79**
(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

2550 COURTS WITHOUT CONCURRENT JURISDICTION TO REDRESS UNFAIR LABOR PRACTICES

2550-1800 Doctrine of primary jurisdiction requires judicial abstention

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. **435 U.S. 497 (SCt, 1978)**
(state statute which sought to regulate pension plans which were product of collective bargaining negotiations and are mandatory subject of bargaining under NLRA held constitutional; NLRA did not preempt state statute since Federal Welfare and Pension Disclosure Act of 1958 expressly recognized and preserved state authority to regulate pension plans)

2562 STATE AGENCY JURISDICTION IN REPRESENTATION MATTERS

Albert Einstein Medical Center **248 NLRB No. 009**
(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

2587 STATE REGULATION OF PREEMPTED SUBJECT MATTER

2587-2500 State statute

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**
(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. **435 U.S. 497 (SCt, 1978)**
(state statute which sought to regulate pension plans which were product of collective bargaining negotiations and are mandatory subject of bargaining under NLRA held constitutional; NLRA did not preempt state statute since Federal Welfare and Pension Disclosure Act of 1958 expressly recognized and preserved state authority to regulate pension plans)

5000 STATUTORY CRITERIA OF JURISDICTION

7500 TERRITORIAL JURISDICTION

7567 OTHER

7567-1400 Puerto Rico

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that Bd has no jurisdiction because Constitution of Commonwealth of Puerto Rico and laws enacted thereunder regulate labor relations in Puerto Rico, rejected)

240 DISCRETION IN EXERCISE OF JURISDICTION

0100 GENERALLY

1700 BOARD AUTHORITY TO ESTABLISH SCOPE OF DISCRETIONARY JURISDICTION

2500 ADVISORY OPINIONS AS TO JURISDICTION (FOR JURISDICTIONAL HOLDINGS SEE 280)

A. J. Clarke Management Corp. **249 NLRB No. 157**
(AO that Bd would assert jurisdiction over E engaged in business of providing management services to residential apartment buildings where total gross annual rental revenues derived from apartments managed by E are in excess of $500,000 standard established by Bd for residential apartments, and out-of-state purchases exceed $50,000)

Double A Property Associates, et al. **249 NLRB No. 050**
(Bd declined to issue AO requested by E who participated in ULP proceeding before State Bd, but did not raise jurisdiction issue therein, despite its sole and exclusive knowledge of jurisdictional commerce data; E's basic reason for filing instant ptn appears to be its dissatisfaction with State Bd's denial of mtn to reopen hearing and to secure different forum in which to be heard; State Bd's refusal to reopen hearing has nothing to do with issues of jurisdiction and is not relevant to ptn herein)

Wave Hill, Inc. (District Council 37, AFSCME, AFL-CIO) **248 NLRB No. 149**
(AO that Bd would not assert jurisdiction over not-for-profit environmental center which operates (1) aboretum and botanical garden, (2) arts and/or cultural center, and (3) environmental science center for conservation, education, and scientific studies, where E's annual gross revenue did not meet Bd's $1 million standard for assertion of jurisdiction over enterprises such as; E in many ways is similar to an art museum, contributes to cultural and educational values of community and thus acts as adjunct to educational system)

Mandel Management Corporation (Local 32B--Local 32J, Service Employees) **248 NLRB No. 066(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)**

2501 GENERALLY

Tavern Owners, Inc., d/b/a The Lighthouse Restaurant **251 NLRB No. 130**
(no evidentiary hearing provided for)

2550 LIMITED TO DETERMINATION OF APPLICABILITY OF DISCRETIONARY STANDARDS

Fundacion Educativa Ana G. Mendez, Inc. **249 NLRB No. 142**
(AO ptn dismissed since basic issue presented was whether E's full-time faculty members of college were covered by Act which does not fall w/i intendment of Bd's AO rules which are designed primarily to determine questions of jurisdiction by application of Bd's discretionary standards; furthermore, ptn would be dismissed because there is pending before Bd ULP proceeding which has advanced to formal stage when binding adjudication of jurisdictional issue can be obtained)

Double A Property Associates, et al. **249 NLRB No. 050**
(in declining to issue AO requested by E who participated in ULP proceedings before State Bd, Bd did not pass upon propriety of State Bd's rulings adverse to E, since AO is designed primarily for determining whether E's operations meet Bd's discretionary jurisdictional standard)

2900 DECLARATORY JUDGMENTS AS TO JURISDICTION

3300 BOARD DEFERENCE TO OTHER MEANS OF ADJUSTMENT

3367 CIRCUMSTANCES OF DEFERRAL

3367-0100 Generally

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(even when resolution of contract is more central to a case, Bd is not preempted by overlapping domain of arbitrator; Bd may choose to defer not only when there is an outstanding arbitral award but also in some circumstances when no award has been issued)

3367-0113 Purpose of fostering and facilitating existing collective-bargaining relationship

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. **613 F.2d 1102 (C.A.D.C.) (1980)**
(*submission to grievance and arbitration proceedings of disputes which might involve ULPs would be substantially discouraged if disputants thought Bd would give de novo consideration to issue which arbitrator might resolve*)

3367-0150 Spielberg standard of fairness

Amoco Texas Refining Company **251 NLRB No. 202**

Bay Shipbuilding Corporation **251 NLRB No. 114**
(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since *coverage* which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(ALJ rejected GC's contention that arbitration proceeding, denying discharge grievance, was not fair and regular because of Ee's status as U dissident in conflict with U leadership, key witness' lack of credibility in critical area, failure to present surveillance issue, and fact that Ee, in running for U office, challenged U and its relationship with E; in accord with Bd's ruling, such issues, including E's Spielberg defense, were best resolved at hearing wherein they were fully litigated)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(doubt regarding fairness of arbitration proceeding because arbitrator was permanent under parties' contract, and assertedly had vested interest in being retained in subsequent contracts by incumbent U officials held not justified; there was no trace of fraud or collusion either alleged or disclosed, and nothing in record to establish that U official involved in proceeding has or had anything to do with designating permanent arbitrator; arbitration proceeding in all other respects was fair and regular and award was not repugnant to Act)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(deferral to arbitration award denying discharge grievance, appropriate, where dischargee insisted on having expedited arbitration hearing which she was granted and was duly represented therein by U attorney whom she had requested and who assisted her in securing witnesses and otherwise preparing for arbitration; dischargee was provided full opportunity and litigated not only circumstances of discharge but also matters relative to her protected concerted activity and, in addition, she submitted her own position paper to arbitrator)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

3367-0150—Cont.

Colonial Stores Incorporated **248 NLRB No. 142**
(no deferral to arbitration award denying Ee's grievance and finding that Ee was discharged for cause, where *cause* found by arbitrator was in fact Ee's protected concerted activity of protesting E's admitted failure to implement grievance settlement and U's failure to enforce agreement)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

Andersen Sand

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. **613 F.2d 1102 (C.A.D.C.) (1980)**

3367-0400 Bars to deferral in advance of arbitration

3367-0401 Generally

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(Bd properly refused E's request to defer to ongoing arbitration proceedings since deferral is considered only if raised as an affirmative defense, and E failed to make any explicit request for deferral)

3367-0405 Deferral inappropriate where charge involves individuals rights

Carpenters and Joiners, Local No. 1914 (W

3367-0420 Adequacy of representation of employee rights

3367-0420-6700 Where substantial conflict exists

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**
(deferral to U's grievance procedure inappropriate where interests of Ees are in conflict with that of U)

3367-0480 Availability of arbitration

3367-0480-2500 Effect of prior arbitration

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(contention that Bd erred in concluding that discharge was for cause because decision was contrary to arbitration panel's conclusion, rejected; Bd was not entitled to rely upon finding of panel because it did not decide whether ULP had been committed and only determined that agreement had been breached, and Bd found no ULP had been committed herein; proper means to enforce binding arbitration award is an action in district ct)

3367-0800 Availability of arbitration proceedings

3367-0825 Scope of grievance and arbitration contract provisions

Roadway Express, Inc. **JD-281-80**
(deferral to grievance machinery which did not provide for arbitration, unwarranted)

3367-1200 Willingness of parties to arbitrate

Newspaper Printing Corporation **JD-203-80**
(no deferral to arbitration where issue is E's insistance on referring grievances to arbitration solely on question of arbitrability since E has *evidenced course of conduct designed to rid itself of established bargaining relationship and attendent thereto* and grievance involved, which is classic example of whether Ee voluntarily quit or was constructively discharged, is ripe for arbitration)

3367-1700 Nature of proceeding

3367-1712 Proceeding established by contract

3367-1712-5000 Grievance procedure with impartial arbitration

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

3367-1775 Court suit

3367-1775-3300 Under Section 301

Newspaper Printing Corporation **JD-203-80**
(*refusal to arbitrate not per se violation of Section 8(a)(5); however where refusal to arbitrate, like refusal to comply with any contract provision, evidences intention to violate entire contractual undertaking and is part and parcel of unlawful scheme to repudiate bargaining obligation then refusal to arbitrate unlawful; in such circumstances Bd will order remedy even though U might also have remedy under Section 301 of Act*)

Newspaper Printing Corporation **JD-203-80**
(E's refusal to arbitrate or even submit to third step of grievance procedure involving whether E voluntarily quit or was discharged, unlawful; notwithstanding U might also have Section 301 remedy; nor was deferral to arbitration appropriate)

3367-1787 Non-Board settlement by parties

United States Steel Corporation **250 NLRB No. 059**
(C not dismissed notwithstanding grievance settlement agreement where unclear extent to which settlement agreement dealt with ULP issue and participation of charging party in settlement discussions, charging party never signed agreement nor is he willing to accept its terms since his acceptance conditional and conditions not met)

3367-3300 Authority of tribunal making determination

3367-3340 Identity of issues

3367-3340-5000 ULP proceedings

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

3367-3360 Adequacy of decision

Andersen Sand

3367-5000 Fair and regular nature of proceeding

3367-5001 Generally

Babcock

Babcock

3367-5075 Result not repugnant to Act

Amoco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

General Telephone Company of Michigan **251 NLRB No. 099**
(no deferral to arbitrator's award suspending Ee for harrasing other Ees because they had not participated in strike, since arbitrator's decision was repugnant to Act; decision relied on subjective reactions of harassed Ees rather than effect harassment tended to produce)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

General Telephone Company of Ohio **248 NLRB No. 010**
(arbitrator's theory that E was free to change its general instructions which it had agreed with U to apply to unit herein held repugnant to Act, since application was pursuant to mutual agreement establishing certain working conditions and supplementing contract)

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 1980)**
(enforcement denied where Bd committed error in declining to defer to arbitration award as clearly repugnant to Act where arbitrator had deter-

3367-5075—Cont.

mined that E had discharged Ee for just cause; Ee's conduct arguably unprotected and where arbitration award arguably characterizable as not inconsistent with Bd policy, Bd must defer to arbitrator's decision)

3367-5076 Consideration of unfair labor practices

Chemical Leaman Tank Lines, Inc. **251 NLRB No. 146**
(deferral warranted where arbitration award contains complete factual findings on safety issue, and there is the necessary parallelism between contractual and statutory issues; thus panel implicitly decided ULP question)

Koppel, Inc. **251 NLRB No. 096**
(deferral inappropriate where arbitrator was presented with evidence of discriminatee's protected activity but made no reference to such evidence or finding concerning activities as related to discharge)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**
(no deferral to decision of Joint State Committee regarding alleged unlawful discharge where committee did not hear testimony of supervisor who discharged Ee and decision did not indicate that consideration was given to issue of whether Ee's protected activities were reason for discharge; arbitrator must consider these issues though generally not necessary to pass upon ULP directly)

Peschke Packing Company **JD-(NY)-33-80**
(deferral appropriate where arbitrator was presented with ULP issue and with substantially all evidence that was presented later at ULP proceeding, and specifically dealt with U's argument of discriminatory motive for suspension and discharge and implicitly rejected it)

3367-6700 Stage to which contract enforcement proceeding has progressed

3367-6762 Arbitration or joint-committee proceedings

3367-6762-6700 After decision

Andersen Sand

3367-8300 Issues for which deference is sought

3367-8301 Generally

3367-8301-3300 Issues of contract meaning or application

Bay Shipbuilding Corporation **251 NLRB No. 114**
(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since *coverage* which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

3367-8312 Unit or representative status issues

3367-8312-1400 Representative determination

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(no deferral where issue was one of representation and appropriate unit)

3367-8312-4200 Unit determination

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(no deferral where issue was one of representation and appropriate unit)

3367-8312-8400 Accretion

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where question was whether newly-acquired plant involving transfer of 121 Ees to merged location was accretion to existing unit covered by bargaining agreement, deferral to pending grievance proceeding involving interests of only 8 Ees held inappropriate, since Bd has consistently declined to leave to arbitrator responsibility for determining whether newly-acquired plant was accretion to unit covered by bargaining agreement, and Ees and issues involved in the grievance proceeding are not coextensive with those involved herein)

3367-8350 Discharge, layoffs or disciplinary action

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(deferral to arbitration award denying discharge grievance, appropriate, where there was no evidence establishing U's complicity in discharge, no conflict existed between dischargee and U, her protected concerted activity was fully aired at hearing, arbitrator rejected dischargee's assertion that discharge resulted from confrontation with E in connection with her running for U office, and instead found that real reason for discharge was poor workmanship)

Carterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) 8250 NLRB 089
(no deferral where issues were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

Babcock

Babcock

Colonial Stores Incorporated **248 NLRB No. 142**
(no deferral to arbitration award denying Ee's grievance and finding that Ee was discharged for cause, where *cause* found by arbitrator was in fact Ee's protected concerted activity of protesting E's admitted failure to implement grievance settlement and U's failure to enforce agreement)

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(upon overruling Electronic Reproduction, 213 NLRB 758, and returning to standard for deferral which existed prior to that decision, Bd held that ALJ properly refused to defer to results of arbitration proceedings wherein ULP issues ofdiscrimination involving reprimands and discharge were not litigated)

Peschke Packing Company **JD-(NY)-33-80**
(deferral appropriate where arbitrator was presented with ULP issue and with substantially all evidence that was presented later at ULP proceeding, and specifically dealt with U's argument of discriminatory motive for suspension and discharge and implicitly rejected it)

Newspaper Printing Corporation **JD-203-80**
(no deferral to arbitration where issue is E's insistance on referring grievances to arbitration solely on question of arbitrability since E has *evidenced course of conduct designed to rid itself of established bargaining relationship and attendent thereto* and grievance involved, which is classic example of whether Ee voluntarily quit or was constructively discharged, is ripe for arbitration)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 1980)**
(enforcement denied where Bd committed error in declining to defer to arbitration award as clearly repugnant to Act where arbitrator had determined that E had discharged Ee for just cause; Ee's conduct arguably unprotected and where arbitration award arguably characterizable as not inconsistent with Bd policy, Bd must defer to arbitrator's decision)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(contention that Bd erred in concluding that discharge was for cause because decision was contrary to arbitration panel's conclusion, rejected; Bd was not entitled to rely upon finding of panel because it did not decide whether ULP had been committed and only determined that agreement had been breached, and Bd enforces arbitration award after concluding that ULP had been committed, but Bd found no ULP herein; proper means to enforce binding arbitration award is an action in district ct)

3367-8362 Bargaining obligation

3367-8362-8000 Power to make unilateral changes in terms and conditions of employment

3367-8362-8075 Change in job classifications

Carterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO)
8250 NLRB 089
(no deferral where issues were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

3367-8366 Union refusal to bargain

Local 1115, Joint Board, Nursing Home

3367-8367 Contractual obligations

3367-8367-5500 Referral provision

Sachs Electric Company **248 NLRB No. 092**
(in case involving U's discriminatory refusal to acord qualified members of other Us placement on referral list, Bd declined to defer to arbitration award of appeals committee since issue framed by committee was not factually parallel to statutory issue herein)

3367-8387 Other interference with Section 7 rights

Carterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO)
8250 NLRB 089
(no deferral where issues were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

5000 CESSION OF JURISDICTION TO STATE OR TERRITORIAL AGENCIES

6700 EFFECT OF OTHER STATUTES

6750 FAIR LABOR STANDARDS ACT

Margate Bridge Company **247 NLRB No. 205**
(Bd not bound by Labor's Wage and Hour Division classification of private toll bridge as non-retail establishment because Fair Labor Standards Act concerned with Es engaged in commerce while Bd's jurisdiction extends to Es *affecting commerce*)

6787 FREEDOM OF INFORMATION ACT

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**
(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

8300 LIMITATIONS ON DISCRETION IN EXERCISE OF JURISDICTION

260 STANDARDS FOR ASSERTION OF JURISDICTION

0100 GENERALLY

3300 COMPUTATION OF MONETARY VOLUME OF GOODS AND SERVICES

3320 MEASURE OF COMMERCE

3320-0100 Generally

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**
(jurisdiction asserted over E engaged in business of performing body work and painting of automobiles notwithstanding E failed to meet Bd's income requirements for retail enterprises, since non-retail revenue of $51,874 derived from Es who themselves meet Bd's standards for Es affecting commerce; goods valued at $27,856 purchased by E directly from sources located outside E's state and goods valued at $27,710 purchased from suppliers located in E's state who themselves purchased goods directly from outside state, when added together, establish Bd's jurisdiction)

Margate Bridge Company **247 NLRB No. 205**
(when legal jurisdiction has been established and some relevant standard for assertion of jurisdiction has been met, immaterial that jurisdiction might be asserted under one of several different standards)

3320-0137 Total business of employer

Greenlawn Funeral Home, Inc. **249 NLRB No. 141**
(in determining whether funeral home's gross revenues meet Bd's jurisdictional standards for retail enterprises revenues from *pre-need* sales deducted from its gross revenues since state law requires all *pre-need* income be held in trust until all contracted for services are provided or customer voids contract and requests refund)

3320-7500 Inflow

3320-7501 Generally

3320-7501-4000 Source of inflow

Mayar Morganroth and Jack Ferris, Co-Partners d/b/a The Leland; et al. **249 NLRB No. 159**
(supplies and equipment from entity previously found by Bd to be engaged in interstate commerce)

3320-7533 Direct

Clark

3320-7567 Indirect

Clark

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(jurisdiction asserted over electrical subcontractor performing services valued in excess of $50,000 during year for general contractor who met Bd's administrative jurisdictional standards on basis of *direct inflow*; therefore, sub-contractor met Bd's jurisdictional standard on basis of *indirect outflow*)

3340 PERIOD OF COMPUTATION

3340-0100 Generally

Sparkie's Special Delivery

3340-5000 Projection from short period

Clark

Sparkie's Special Delivery

3360 ENTERPRISE WHOSE GOODS AND SERVICES ARE MEASURED

3360-3300 Integrated enterprise

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**
(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

3360-3333 Single employer

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

3360-5000 Successor employer

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(jurisdiction asserted over successor E since it stipulated that earlier predecessor was found to be engaged in commerce w/i meaning of Act in prior Bd decision and that it is successor, having employed same complement of Ees and continued predecessor's operations in same manner and successor E did not contest Bd's jurisdiction over it)

Sparkie's Special Delivery

3360-8400 Employer engaged in both exempt and nonexempt enterprises

Harborcreek School for Boys **249 NLRB No. 177**
(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

3390 SERVICES INTIMATELY RELATED TO OPERATIONS OF EXEMPT ENTERPRISE

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

Metro Ambulance Service, Inc. **249 NLRB No. 008**
(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

3395 CONTROL OVER LABOR RELATIONS BY EXEMPT ENTERPRISE

Community Action Program of Oklahoma City and County, Inc. **251 NLRB No. 016**
(Bd asserted jurisdiction over nonprofit social services corporation funded primarily by grants from city, state and Federal agencies where only control Federal agency exercised over labor relations was salary limitations while E had control over disciplinary actions, hiring, firing and setting initial salaries)

R. W. Harmon

Soy City Bus Services, Division of R. W. Harmon

Metro Ambulance Service, Inc. **249 NLRB No. 008**
(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

3395—Cont.

N.L.R.B. v. Chicago Youth Centers **616 F.2d 1028 (C.A. 7, 1980)**
(public agency has control over funding, job classification and compensation, and other terms and conditions of employment of head start program run by private agency; thus public and private agencies are joint-Es and private agency shares exemption of public agency under Sec. 2(2) of Act from Bd jurisdiction)

N.L.R.B. v. Chicago Youth Centers **616 F.2d 1028 (C.A. 7, 1980)**
(public agency has control over funding, job classification and compensation, and other terms and conditions of employment of head start program run by private agency; thus public and private agencies are joint-Es and private agency shares exemption of public agency under Sec. 2(2) of Act from Bd jurisdiction)

6700 STANDARDS APPLICABLE TO SPECIFIC TYPES OF ENTERPRISES

280 ENTERPRISES OVER WHICH THE BOARD DID OR DID NOT ASSERT JURISDICTION

0100 AGRICULTURAL PRODUCTION - CROPS

0200 AGRICULTURAL PRODUCTION - LIVESTOCK

0700 AGRICULTURAL SERVICES

0800 FORESTRY

0900 FISHING, HUNTING, AND TRAPPING

1000 METAL MINING

1100 ANTHRACITE MINING

1200 BITUMINOUS COAL AND LIGNITE MINING

1300 OIL AND GAS EXTRACTION

1400 MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS

1500 BUILDING CONSTRUCTION - GENERAL CONTRACTORS AND OPERATIVE BUILDERS

1600 CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION - GENERAL CONTRACTORS

1700 CONSTRUCTION - SPECIAL TRADE CONTRACTORS

2000 FOOD AND KINDRED PRODUCTS

2100 TOBACCO MANUFACTURES

2200 TEXTILE MILL PRODUCTS

2300 APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

2400 LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE

2500 FURNITURE AND FIXTURES

2600 PAPER AND ALLIED PRODUCTS

2700 PRINTING, PUBLISHING, AND ALLIED INDUSTRIES

2800 CHEMICALS AND ALLIED PRODUCTS

2900 PETROLEUM REFINING AND RELATED INDUSTRIES

3000 RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS

3100 LEATHER AND LEATHER PRODUCTS

3200 STONE, CLAY, GLASS, AND CONCRETE PRODUCTS

3300 PRIMARY METAL INDUSTRIES

3400 FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT

3500 MACHINERY, EXCEPT ELECTRICAL

3600 ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT, AND SUPPLIES

3700 TRANSPORTATION EQUIPMENT

3800 MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL, AND OPTICAL GOODS; WATCHES AND CLOCKS

3900 MISCELLANEOUS MANFACTURING INDUSTRIES

4000 RAILROAD TRANSPORTATION

4100 LOCAL AND SURBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION

4110 LOCAL AND SUBURBAN PASSENGER TRANSPORTATION

Nordstrom's Ambulance Service, Inc. and Atlantic Ambulance Service, Inc. **251 NLRB No. 137**
(having concluded that retail standard applies to E's ambulance service operation, Bd declined jurisdiction over E since its annual gross revenues were well below the $500,000 retail standard)

Metro Ambulance Service, Inc. **249 NLRB No. 008**
(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(jurisdiction asserted over E engaged in transportation of airline passengers between hotels and airport where E derived revenue in excess of $50,000 from its operations and satisfied jurisdictional tests as *link* in interstate commerce)

4120 TAXICABS

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**
(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

4150 SCHOOL BUSSES

R. W. Harmon

Soy City Bus Services, Division of R. W. Harmo n

Soy City Bus Services, Division of R. W. Harmon

Soy City Bus Services, Division of R. W. Harmon

4200 MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING

4400 WATER TRANSPORTATION

4500 TRANSPORTATION BY AIR

4600 PIPE LINES, EXCEPT NATURAL GAS

4700 TRANSPORTATION SERVICES

4800 COMMUNICATION

4900 ELECTRIC, GAS, AND SANITARY SERVICES

4950 SANITARY SERVICES

Florida Cities Water Company **247 NLRB No. 111**

(jurisdiction asserted over investor-owned, for profit, private water and sewer utility company operating pursuant to state franchise notwithstanding it is subject to various regulations by State, where it has sufficient control over Ees' working conditions to enable it to bargain meaningfully with U)

5000 WHOLESALE TRADE - DURABLE GOODS

5100 WHOLESALE TRADE - NONDURABLE GOODS

5200 BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS

5300 GENERAL MERCHANDISE STORES

5400 FOOD STORES

5500 AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS

5600 APPAREL AND ACCESSORY STORES

5700 FURNITURE, HOME FURNISHINGS AND EQUIPMENT STORES

5800 EATING AND DRINKING PLACES

5810 EATING AND DRINKING PLACES

Tavern Owners, Inc., d/b/a The Lighthouse Restaurant **251 NLRB No. 130**

(Bd did not assert jurisdiction over tavern and restaurant enterprise where annual gross volume of business is less that $200,000 and business is not subject to interstate inflow or outflow standard)

5900 MISCELLANEOUS RETAIL

6000 BANKING

6100 CREDIT AGENCIES OTHER THAN BANKS

6200 SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES

6300 INSURANCE

6400 INSURANCE AGENTS, BROKERS, AND SERVICE

6500 REAL ESTATE

6530 REAL ESTATE AGENTS AND MANAGERS

A. J. Clarke Management Corp. **249 NLRB No. 157**

(AO that Bd would assert jurisdiction over E engaged in business of providing management services to residential apartment buildings where total gross annual rental revenues derived from apartments managed by E are in excess of $500,000 standard established by Bd for residential apartments, and out-of-state purchases exceed $50,000)

Mandel Management Corporation (Local 32B--Local 32J, Service Employees) **248 NLRB No. 066(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)**

6600 COMBINATIONS OF REAL ESTATE, INSURANCE, LOANS, LAW OFFICES

6700 HOLDING AND OTHER INVESTMENT OFFICES

7000 HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES

World Evangelism, Inc. **248 NLRB No. 117**

(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds and Ees' performance of work necessarily associated with those commercial activities)

7010 HOTELS, MOTELS, AND TOURIST COURTS

Waterford Park, Inc. **251 NLRB No. 124**

(Bd asserted jurisdiction over motel facility not withstanding it has close financial ties with racetrack; no evidence that labor dispute at motel would disrupt racetrack operations and also no significant state regulation of Ees working at motel)

7200 PERSONAL SERVICES

7300 BUSINESS SERVICES

7500 AUTOMOTIVE REPAIR, SERVICES, AND GARAGES

7540 AUTOMOTIVE SERVICES, EXCEPT REPAIR

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**

(jurisdiction asserted over E engaged in business of performing body work and painting of automobiles notwithstanding E failed to meet Bd's income requirements for retail enterprises, since non-retail revenue of $51,874 derived from Es who themselves meet Bd's standards for Es affecting commerce; goods valued at $27,856 purchased by E directly from sources located outside E's state and goods valued at $27,710 purchased from suppliers located in E's state who themselves purchased goods directly from outside state, when added together, establish Bd's jurisdiction)

7550 GASOLINE SERVICE STATIONS

Vantage Petroleum Corp. **247 NLRB No. 202**

(jurisdiction asserted over E petroleum company's operation of state parkway gas service stations under contract with the state, since state's actual exercise of control over E's operations is not to such degree as to impair E's control over labor relations so as to render E incompetent to bargain efficaciously with a U, nor does E's performance of services for state constitute performance of services intimately related to traditional state functions warranting nonassertion of jurisdiction)

7600 MISCELLANEOUS REPAIR SERVICES

7800 MOTION PICTURES

7900 AMUSEMENT AND RECREATION SERVICES, EXCEPT MOTION PICTURES

7940 COMMERCIAL SPORTS

Waterford Park, Inc. **251 NLRB No. 124**

(Bd asserted jurisdiction over motel facility not withstanding it has close financial ties with racetrack no evidence that labor dispute at motel would disrupt racetrack operations and also no significant state regulation of Ees working at motel)

8000 HEALTH SERVICES

8060 HOSPITALS

Bon Secours Hospital, Inc. **248 NLRB No. 019**

(1974 health care amendments show intent of Congress that Ees of religiously operated hospitals, unlike schools, are covered as it specifically refused to exclude such hospitals from coverage under Act; therefore assertion of jurisdiction proper)

Mid American Health Services, Inc. **247 NLRB No. 109**

(legislative history of 1974 health care amendments to Act indicates that Congress intended Act to apply to health care institutions operated by religious institutions thus nursing home run by Seventh Day Adventists comes w/i Bd's jurisdiction)

8100 LEGAL SERVICES

Kaplan, Sicking, Hessen, Sugarman, Rosenthal

Kaplan, Sicking, Hessen, Sugarman, Rosenthal

8110 LEGAL SERVICES

8110—Cont.

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(legal services organization established and funded by Congress and providing legal services to qualified indigent persons held subject to Bd's discretionary standard, where it had gross annual revenues in excess of $2,000,000 and made purchases out of state in excess of $18,000; fact that direct purchases from outside state were less than $50,000 is immaterial)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

Clark

8200 EDUCATIONAL SERVICES

8210 ELEMENTARY AND SECONDARY SCHOOLS

St. Joseph's High School **248 NLRB No. 123**
(Bd reversed its assertion of jurisdiction over Catholic School in view of intervening Supreme Ct decision *NLRB v. Catholic Bishop of Chicago*)

Cardinal Timonthy Manning, Roman Catholic Archbishop of the Archdiocese of Los Angeles, A Corporation Sole; et al. **247 NLRB No. 121**
(on remand to reconsider in light of Supreme Ct's decision in *NLRB v. Catholic Bishop of Chicago*, Bd refused to assert jurisdiction over parochial high schools operated by Catholic Church and dismissed complaint)

8290 SCHOOLS AND EDUCATIONAL SERVICES, NOT ELSEWHERE CLASSIFIED

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

8300 SOCIAL SERVICES

8330 JOB TRAINING AND VOCATIONAL REHABILITATION SERVICES

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

8350 CHILD DAY CARE SERVICES

The Salvation Army of Massachusetts Dorchester Day Care Center **247 NLRB No. 062**
(objection to Bd's assertion of jurisdiction over day care center overruled since principles of Catholic Bishop of Chicago do not preclude assertion of jurisdiction inasmuch as Bd has held that day care centers are primarily concerned with custodial care of children, and only secondarily concerned with education)

8390 SOCIAL SERVICES, NOT ELSEWHERE CLASSIFIED

Harborcreek School for Boys **249 NLRB No. 177**
(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

Catholic Community Services **247 NLRB No. 103**
(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

8400 MUSEUMS, ART GALLERIES, BOTANICAL AND ZOOLOGICAL GARDENS

8420 ARBORETA, BOTANICAL AND ZOOLOGICAL GARDENS

Wave Hill, Inc. (District Council 37, AFSCME, AFL-CIO) **248 NLRB No. 149**
(AO that Bd would not assert jurisdiction over not-for-profit environmental center which operates (1) aboretum and botanical garden, (2) arts and/or cultural center, and (3) environmental science center for conservation, education, and scientific studies, where E's annual gross revenue did not meet Bd's $1 million standard for assertion of jurisdiction over enterprises such as; E in many ways is similar to an art museum, contributes to cultural and educational values of community and thus acts as adjunct to educational system)

8600 MEMBERSHIP ORGANIZATIONS

8660 RELIGIOUS ORGANIZATIONS

World Evangelism, Inc. **248 NLRB No. 117**
(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds and Ees' performance of work necessarily associated with those commercial activities)

Cardinal Timonthy Manning, Roman Catholic Archbishop of the Archdiocese of Los Angeles, A Corporation Sole; et al. **247 NLRB No. 121**
(on remand to reconsider in light of Supreme Ct's decision in *NLRB v. Catholic Bishop of Chicago*, Bd refused to assert jurisdiction over parochial high schools operated by Catholic Church and dismissed complaint)

Catholic Community Services **247 NLRB No. 103**
(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

8800 PRIVATE HOUSEHOLDS

8900 MISCELLANEOUS SERVICES

9100 EXECUTIVE, LEGISLATIVE, AND GENERAL GOVERNMENT, EXCEPT FINANCE

9200 JUSTICE, PUBLIC ORDER, AND SAFETY

9300 PUBLIC FINANCE, TAXATION, AND MONETARY POLICY

9400 ADMINISTRATION OF HUMAN RESOURCES PROGRAMS

9430 ADMINISTRATION OF PUBLIC HEALTH PROGRAMS

Community Health and Home Care, Inc. **251 NLRB No. 094**
(E providing and administering comprehensive public health nursing and homemaker program to 10-town area in State held agency of towns it serves where E's board of directors is accountable to and appointed by public officials in towns served by the agency and therefore it is a political subdivision and exempt from Bd's jurisdiction)

9500 ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS

9600 ADMINISTRATION OF ECONOMIC PROGRAMS

9700 NATIONAL SECURITY AND INTERNATIONAL AFFAIRS

9900 NONCLASSIFIABLE ESTABLISHMENTS

300 INVESTIGATION AND CERTIFICATION OF REPRESENTATIVE

301 GENERALLY

5000 EXISTENCE OF QUESTION OF REPRESENTATION

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

308 WHO MAY RAISE QUESTION OF REPRESENTATION

0100	GENERALLY
2000	EMPLOYEE OR GROUP OF EMPLOYEES
4000	INDIVIDUAL
6000	LABOR ORGANIZATION
8000	EMPLOYER

316 HOW QUESTION OF REPRESENTATION IS RAISED

0100 GENERALLY

3300 DEMAND FOR AND REFUSAL OF RECOGNITION

3301 GENERALLY

3301-5000 Demand to represent employees as accretion to existing unit does not raise question of representation

United Hospitals, Incorporated and The Children's Hospital, Inc. **249 NLRB No. 063**

(no qcr raised where U sought to accrete unrepresented group of Ees employed in multi-E association, overwhelming majority of whom were excluded from covered unit, as Bd will not, on piecemeal basis, accrete to that unit unrepresented Ees of Es of multi-E association, and U did not seek to represent Ees in separate unit)

3375 IMPLIED DEMAND

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

6700 FILING OF PETITION FOR ELECTION

6717 ADEQUACY OF PETITION

6717-6700 As to description of unit

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**

(U's contention that deauthorization ptn should be dismissed since appropriate unit should include both office Ees and installers and technicians rather than only office Ees as pattern of bargaining has been to include separately certified units under one contract rejected, where no intent to merge two units into single unit as evidenced by reference in supplemental agreement to 2 units)

Catholic Community Services **247 NLRB No. 103**

(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

324 SHOWING OF INTEREST IN REPRESENTATION

0100 GENERALLY

0150 PURPOSE OF REQUIREMENT TO LIMIT ELECTIONS TO THOSE SITUATIONS WHERE THERE IS ENOUGH INTEREST TO JUSTIFY THEM

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(*Sec. 9(c)(1)(A) substantial interest requirement* is not jurisdictional prerequisite to Bd action; rather it is *administrative expedient only,* adopted to enable Bd to determine for itself whether or not further proceedings and warranted)

2000 INTEREST SHOWING AS NONLITIGABLE ADMINISTRATIVE MATTER

2033 WHERE REQUIREMENT IS BOARD POLICY

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(no need to litigate U support at initial ptn stage)

4000 EXTENT OF INTEREST REQUIRED

4020 BY PETITIONER

4020-2100 Showing where union merger or affiliation occurred

Monmouth Medical Center **247 NLRB No. 075**
(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

4020-4200 Where Board directed unit different from that sought by petitioner

4020-4267 Petitioner's showing must be adequate before election held

The Folger Coffee Company **250 NLRB No. 001**
(petitioner accorded 10 days from date of instant *Decision on Review* in which to submit requisite showing of interest to support election, since *voting group* found appropriate in instant case was larger than unit requested)

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**
(where record, on review of RD's decision, was unclear as to whether petitioner had made sufficient showing of interest for unit of E's truckdrivers expanded to include owner-operators and non-owner drivers of trucks leased to E, petitioner accorded period of 10 days in which to submit requisite showing interest to support instant election)

4060 DEAUTHORIZATION PETITIONER

4060-2500 Cannot be supervisor

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**
(U's contention that individual was supervisor and therefore ineligible to file deauthorization ptn, rejected, since petitioner was held Ee)

4080 RERUN ELECTIONS

4080-3300 New showing not required

Monmouth Medical Center **247 NLRB No. 075**
(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

6000 TIME FOR SUBMISSION OF SHOWING OF INTEREST

6033 BY PETITIONER

6033-3300 Showing need not be submitted with petition

The Folger Coffee Company **250 NLRB No. 001**
(petitioner accorded 10 days from date of instant *Decision on Review* in which to submit requisite showing of interest to support election, since *voting group* found appropriate in instant case was larger than unit requested)

8000 VALIDITY OF SHOWING

8075 DESIGNATION OF REPRESENTATIVE

8075-3300 Designation other than of petitioner

8075-3320 Of parent international

CAM Industries, Inc. (Millmen-Industrial Carpenters Local 262) **251 NLRB No. 004**
(E's refusal to bargain with U after card check established majority status violative notwithstanding authorization cards designated only International, for Bd has long held that such card serves as valid designation of affiliate when there was no confusion as to identity of potential representative in minds of signers)

8075-3380 Of predecessor union

Monmouth Medical Center **247 NLRB No. 075**
(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

332 DISCLAIMER OF INTEREST IN BEING REPRESENTATIVE

0100 GENERALLY

2500 IN PROCEEDINGS INITIATED BY EMPLOYER

2540 RESULT OF EFFECTIVE DISCLAIMER

2540-1700 Dismissal of petition in absence of question of representation

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

2540-6700 Disclaimer after decision directing election

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

5000 WITHDRAWAL BY PETITIONING UNION OR INTERVENOR

5012 DISCLAIMER OF INTEREST BY INCUMBENT UNION

William Moses, Estate of Bella Moses **247 NLRB No. 20**
(intervening incumbent U's disclaimer of interest in unit petitioned for by outside U held untimely and ineffective attempt to withdraw from multi-E bargaining unit, where intervenor had been bargaining representative of Ees for many years, it continued to represent them for 3 years after seeking to sever relationship with E, and it participated in recent contract negotiations for 6 months before announcing its disclaimer at time agreement was reached on virtually all issues)

William Moses, Estate of Bella Moses **247 NLRB No. 20**
(intervening incumbent U's attempted disclaimer of interest in representing Ees in unit petitioned-for by outside U, disallowed where disruptive of stable multi-E bargaining relationship; Bd's concern for stability in multi-E bargaining relationship not diminished merely because attempted disclaimer would remove intervenor from further bargaining; multi-E association had reason to believe negotiations with intervenor would reach fruition and existing bargaining relationship would endure; and if disclaimer were allowed intervenor would be reshaping composition of unit)

7500 DISCLAIMER IN DECERTIFICATION PROCEEDINGS

339 WHO MAY ACT AS REPRESENTATIVE

0100 GENERALLY

2500 LABOR ORGANIZATIONS

5000 INDIVIDUALS

7500 DISQUALIFICATION AS REPRESENTATIVE

7550 DOMINATION OR ASSISTANCE BY EMPLOYER

7550-5000 Participation of supervisors in union affairs

Rockford Memorial Association d/b/a Rockford Memorial Hospital **247 NLRB No. 051**
(contention U disqualified from representing Ees because of presence of supervisors in internal organization of International, rejected, absent evidence E's supervisors or these of third parties directly participated in or influenced U's bargaining process where all bargaining agreements negotiated by local committee composed of only bargaining unit personnel w/o interference, or requirement of approval by International's Bd of Directors)

7575 CONFLICT OF INTERESTS OF REPRESENTATIVE

7575-5000 Arising from relationship to other employers

Abington Memorial Hospital **250 NLRB No. 098**
(fact that leadership positions in labor organization representing E's Ees were held by supervisors employed by other Es does not, standing alone, create a conflict of interest disqualifying organization from representing E's Ees; Bd does not assume inherent conflict of interest in bargaining process between supervisors and Ees; rather, conflict of interest may result only when connection is shown between E of Ees who seek to be represented and third party Ees, and E failed to make such showing)

7575-8100 Arising from relationship to other unions

7575-8150 Parent union controlled, influenced or dominated by supervisors and affiliated unions

Abington Memorial Hospital **250 NLRB No. 098**
(in finding that state-wide labor organization was not disqualified from representing Ees because supervisors held leadership positions in organization, Bd noted that organization had insulated its bargaining activities at local level from supervisory participation or influence, where local units, chartered by organization's commission solely for purpose of bargaining with an E, operated independently of state organization and made all decisions with regard to bargaining; and commission controlled expenditures of its own funds, and was not accountable to state organization for expenditures)

Abington Memorial Hospital **250 NLRB No. 098**
(mere assertion that E's supervisors hold leadership positions w/i nurses' labor organization insufficient to demonstrate *clear and present* danger of conflict of interest interfering with bargaining process; such participation will result in disqualification of labor organization only where activities of supervisors will affect E's interest in loyalty of its supervisors or Ees in representative uncompromised by loyalty to their E; and E failed to adduce evidence that its supervisors' activities w/i organization had any connection with organization's bargaining activities)

Abington Memorial Hospital **250 NLRB No. 098**
(fact that leadership positions in labor organization representing E's Ees were held by supervisors employed by other Es does not, standing alone, create a conflict of interest disqualifying organization from representing E's Ees; Bd does not assume inherent conflict of interest in bargaining process between supervisors and Ees; rather, conflict of interest may result only when connection is shown between E of Ees who seek to be represented and third party Ees, and E failed to make such showing)

Healdsburg General Hospital **247 NLRB No. 030**
(nurses association held labor organization and not disqualified from acting as Ee representative on ground that association is subject to control by supervisors who are permitted to be members; even assuming that association is influenced by supervisors, that association represents *all* nurses including supervisors, and that such representation is costly and controversial, Bd held E failed to establish that any of these factors create conflict of interest sufficient to prevent association from acting as Ee representative)

Sidney Farber Cancer Institute **247 NLRB No. 001**
(professional nurses association not precluded from representing Ees notwithstanding contention disqualified by fact high percentage of state and district officers and directors of association are supervisors, absent evidence of supervisory domination of bargaining activities; since no Ees of E serve as officers or directors and supervisors excluded from membership in local chapters at which level bargaining decisions are made)

7575-9300 Union subject to influence and control by supervisors

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(Nurses' Association held labor organization not disqualified to represent E's Ees, even assuming that competitive relationships existed between E and other area hospitals, where there was no showing of conflict of interest between influence w/i Association of supervisor-members employed by competing hospitals and Association's capacity to represent E's Ees; presence alone of third-party supervisors in Association is not sufficient, since Bd will not assume any *inherent* conflict of interest between supervisors and Ees in bargaining process; see also Oak Park Community Hospital, 249 NLRB No. 120)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(Nurses' Assoc. held labor organization not disqualified to represent E's Ees, notwithstanding E's contention that specified supervisors, officials of Assoc. and employed by other hospitals, could influence to an impermissible degree bargaining between E and Assoc., since all bargaining responsibilities of Assoc. reside w/i Assoc.'s commission all of whose members are nonsupervisory nurses, bargaining on local level is conducted by elected Ee bargaining committee, and there was no reasonable likelihood that specified supervisors could meaningfully affect bargaining between E and Assoc.)

Sierra Vista Hospital, Inc. **249 NLRB No. 066**
(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflict of interest under *Sierra Vista*, 241 NLRB No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

Exeter Hospital **248 NLRB No. 056**
(nurses association which included supervisors in leadership positions found to be unqualified to represent Ees since there was clear and present danger of conflict of interest which would interfere with collective bargaining process)

Rockford Memorial Association d/b/a Rockford Memorial Hospital **247 NLRB No. 051**
(contention U disqualified from representing Ees because of presence of supervisors in internal organization of International, rejected, absent evidence E's supervisors or these of third parties directly participated in or influenced U's bargaining process where all bargaining agreements negotiated by local committee composed of only bargaining unit personnel w/o interference, or requirement of approval by International's Bd of Directors)

Healdsburg General Hospital **247 NLRB No. 030**
(nurses association held labor organization and not disqualified from acting as Ee representative on ground association is subject to control of supervisors who are permitted to be members, since (1) there was no evidence E's supervisors belonged to association, and Bd will not resort to speculation about posibility, as claimed by E, that supervisors might join at some future time, and (2) E failed to meet *heavy burden* of showing *direct* conflict of interest because of possible relation between E and Es of supervisors participating in bargaining process)

347 BARS TO CONDUCT OF ELECTION

0100 GENERALLY

2000 PRIOR DETERMINATION OF REPRESENTATIVE

2017 BOARD CERTIFICATION AS REPRESENTATIVE OUTSTANDING

2017-5000 Computation of certification year

2017-5067 From date employer accepts bargaining obligation

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**

(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

2083 ELECTION WITHIN PRECEDING 12 MONTHS

2083-7500 Deauthorization election

2083-7583 Barred when precluded by State statute

Asamera Oil (U.S.) Inc. **251 NLRB No. 085**

(ptn dismissed where filed less than year after *authorization* election held pursuant to state law which provided for state conducted election before authorizing U security provision)

4000 CONTRACT WITH INCUMBENT REPRESENTATIVE

4010 PERIOD DURING WHICH CONTRACT WILL BAR PETITION

4010-8000 Termination of contract prior to expiration

4010-8020 By mutual consent

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

4010-9000 Automatic renewal of contract in absence of notice to terminate

Empire Screen Printing, Inc. **249 NLRB No. 101**

(where contract contained automatic renewal clause unless either party gave timely written notice prior to contract's anniversary date of desire to modify or terminate agreement, Bd adhered to its position that parties, by their course of bargaining, did not waive untimeliness of U's notice to modify contract, and did not forestall renewal of contract)

Empire Screen Printing, Inc. **249 NLRB No. 101**

(decertification ptn dismissed where existing contract specifically required timely notice of intention to modify or terminate contract in order to forestall renewal, but neither party herein gave such timely notice, and contract by its terms automatically renewed for one year)

4040 ADEQUACY OF CONTRACT FORM AND SUBSTANCE

4040-1700 Form of contract

4040-1720 Oral contract

4040-1720-5000 Ineffective as bar

Empire Screen Printing, Inc. **249 NLRB No. 101**

(oral agreement concerning wage increase held no bar to decertification ptn since it did not satisfy requirements that for agreement to achieve bar quality it must contain substantial terms and conditions of employment, and must be signed by all parties)

4040-1750 Questionable signature, initialed or unsigned document

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**

(parties' initials on agreement satisfied Bd's requirements that written agreement be signed by both parties in order to bar election)

4040-5000 Sufficiency of terms

4040-5040 Terms and conditions of employment

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**

(signing of informal agreement covering substantial terms and conditions of employment is sufficient for contract bar purposes even though it was contemplated that contract would be formally executed by parties at later date)

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**

(contract that was intended by parties to cover substantial terms and conditions of employment and initialed by parties barred decertification ptn notwithstanding another document prepared for formal execution which included two provisions not in initialed agreement, also amended vacation pay clause, and which contract E refused to sign because decertification ptn had meanwhile been filed)

4050 CHANGED CIRCUMSTANCES WITHIN CONTRACT TERM

4050-3300 Merger of operations

4050-3367 Consolidation of separately located operations

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

6000 PENDENCY OF OTHER PROCEEDINGS

6020 BOARD PROCEEDINGS

6020-5000 Unfair labor practice proceedings

6020-5033 Blocking charges

6020-5033-7500 Dismissal of petition

Carol Estes and 166 Other Warehouse Facility Employees v. N.L.R.B. **No. 78-4068 (D Ct. KS, Jan. 5, 1979 (unreported))**

(application of *blocking charge rule* to decertification ptn during pendency of ULP charges filed by U and Cs issued on behalf of Bd concerning charges, held appropriate, since it was reasonable to assume RD, at time of dismissal of ptn, had some idea whether U's charges were substantial and whether representation election could fairly be held)

8000 UNIT CONSIDERATIONS

8015 INAPPROPRIATE UNIT

Catholic Community Services **247 NLRB No. 103**

(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

8020 STABILITY OF UNIT

8020-2000 Representative complement

8020-2025 Appropriateness of election

8020-2025-6700 Fifty percent of job classifications

California Labor Industries, Inc. **249 NLRB No. 087**

8020-2025-6700—Cont.

(contract bar to ptn for election where requirement that at least 50 percent of job classifications to be filled at time contract was executed had been satisfied; when contract was executed probationary Ees were performing work which was the equivalent of existence of classifications for *General Extrusion* 121 NLRB 1165, 1167 (1958) purposes, notwithstanding E classified all Ees on payroll as general laborers)

8500 JURISDICTIONAL DISPUTES

9000 NO RAID PACTS

355 TYPES OF ELECTIONS

1100 REPRESENTATION

2200 SELF-DETERMINATION ELECTION

2201 GENERALLY

2201-5000 Globe doctrine

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

2220 ADDITIONS TO EXISTING UNIT

2220-8000 Voting groups

The Folger Coffee Company **250 NLRB No. 001**

(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

2260 PROFESSIONAL EMPLOYEES IN UNIT WITH NONPROFESSIONAL EMPLOYEES

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(professional Ees given opportunity to vote whether to be included in E-wide unit of community action agency Ees or to be represented separately

Rosemount Center **248 NLRB No. 163**

(separate elections directed in voting groups of nonprofessional and professional Ees at E's child day care facility)

3300 DECERTIFICATION

American Recreation Centers, Inc., d/b/a Mel's Bowl (Hotel

3350 IN CERTIFIED OR RECOGNIZED UNIT ONLY

Kardon Chevrolet, Inc. **249 NLRB No. 086**

(in decertification proceeding, part-time salesmen excluded from unit of full-time salesmen at auto agency, since parties mutually agreed to modify certified unit to exclude them where, upon original certification, executed contract eliminated any specific reference to part-time Ees; contract specifically prohibited hiring of part-time salesmen and created special status for current part-time salesman, which would not have been necessary if part-time salesmen were included in unit; and E has not hired any part-time salesmen since execution of contract)

4400 DEAUTHORIZATION

5500 EXPEDITED

6600 REMEDIAL

7700 UNIT CLARIFICATION

8800 AMENDMENT OF CERTIFICATION ELECTION

362 ELIGIBILITY TO PARTICIPATE IN ELECTION

3300 DETERMINATIVE PAYROLL PERIOD

3312 ELIGIBILITY ESTABLISHED BY EMPLOYMENT DURING PAYROLL PERIOD IMMEDIATELY PRECEDING DIRECTION OF ELECTION AND ON DATE OF ELECTION

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**

3312-0100 Generally

Gator Products, Inc. **250 NLRB No. 046**
(Ee working at any time during the payroll period satisfies the employment during payroll period aspect of the eligibility test, even if Ee is no longer employed on the last day of the payroll period)

3312-5000 Temporary interruption of work

Gator Products, Inc. **250 NLRB No. 046**
(Ee who worked during payroll period but was not employed on last day of period and who was subsequently reemployed before election date and was on payroll on election date held eligible to vote)

6700 EMPLOYEE TENURE AND STATUS

6703 ELIGIBILITY DETERMINED BY AGREEMENT OF PARTIES

Illinois Valley Community Hospital **249 NLRB No. 058**
(RD properly determined eligibility of individual Ees in question, regardless of parties' agreement, since it is contrary to Act and established Bd policy to agree that a group of Ees, as a class, will not be able to vote when some of those Ees are *prima facie* members of bargaining unit)

Judd Valve Co., Inc. **248 NLRB No. 018**
(leadman, whose eligibility was challenged on basis of his supervisory status and even though his name was included in Norris Thermador list, held eligible to vote since he did not possess supervisory authority)

Judd Valve Co., Inc. **248 NLRB No. 018**
(issue of eligibility, relating to challenges of voters as supervisors, is to be decided upon facts surrounding such voters' status, rather than upon finality of Norris Thermador agreement)

6706 ELIGIBILITY DETERMINED BY TENURE AND STATUS AS EMPLOYEE DURING DETERMINATIVE PAYROLL PERIOD AND ON DATE OF ELECTION

Sylvester's Corp.; d/b/a Gene Sylvester Alarm Co.; et al. **249 NLRB No. 161**
(challenge to ballot of former supervisor overruled where Ee, initially returned to do unit work to complete complex installation but since then has performed on other jobs as well though he has not exercised any supervisory authority whatsover, E has not informed Ees of former supervisor's change in status and installation not yet completed)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ees who did not work on date U demanded recognition because they had been informed of their termination on that day or beforehand not included in unit)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(E's contention that there was mutual mistake of fact as to ending date of payroll period and date inserted in Stipulation for Certification upon Consent Election not grounds for relief because mistake by one party to agreement, where not induced by other falls on party making mistake)

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

6709 VOTING SUBJECT TO CHALLENGE

Liquid Transporters, Inc. **250 NLRB No. 163**
(laid-off drivers permitted to vote subject to challenge where record was inadequate to determine whether such Ees had reasonable expectancy of recall in immediate future)

6712 PART-TIME EMPLOYEES

6712-2500 Regular part-time

Trustees of Tufts College **251 NLRB No. 108**
(to be eligible to vote regular part-time Ee must work at least 21 hours per week and be covered by E's regular benefit program)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(eligible)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(despite Ee's additional maintenance work performed at homes of E's officers and ALJ determination that Ee was domestic, Bd found Ee's ballot valid where Ee performed unit work on regular part-time basis for protracted period of 3 years preceding election and shared community of interest with other unit Ees)

6712-7500 Part-time with regular job elsewhere

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

6718 TEMPORARY EMPLOYEES

Pandick Press Midwest, Inc. **251 NLRB No. 058**
(Ee who worked regular schedule and performed regular duties but did not share in fringe benefits and whose paycheck originated at local office rather than main office of E found not to be temporary Ee as there was no other difference between her terms and conditions of employment and those of other Ees)

6730 CASUAL, EXTRA, OR INTERMITTENT EMPLOYEES

6730-5000 Ineligible

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(casual Ee who did not work regularly, either full or part-time, and who was employed only when E needed him held not eligible to vote in election)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

6736 STUDENT EMPLOYEES

6736-3300 Summer employees considered temporary

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(college student who was hired as temporary Ee, worked only a short period of time, had irregular work hours, and left to return to school, excluded from unit as temporary Ee who, on date of U recognition demand, did not share a community of interest with other Ees)

6736-6700 Part-time employees

Connecticut Foundry Company **247 NLRB No. 145**
(high school student who was daughter of boss and hired when strike commenced and continued employment over summer excluded from voter eligibility where she intended to and did attend college in fall and also in light of fact that she held *special status* at plant due to family relationship)

6766 EMPLOYEES NOT WORKING ON ELIGIBILITY DATES

6766-1000 Laid off

6766-1050 Eligible if reasonable expectancy of reemployment

Liquid Transporters, Inc. **250 NLRB No. 163**

(laid-off drivers permitted to vote subject to challenge where record was inadequate to determine whether such Ees had reasonable expectancy of recall in immediate future)

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who had been on medical leave and was told there were no openings when he informed E he was able to return to work and had reasonable expectation of reemployment was eligible to vote where E had expressed to individual hope that he would soon return to work and indicated on application form for public aid that firm would rehire him; replacement and termination did not disqualify individual where notification was day after election)

Heatcraft, Division of Lennox Industries, Inc. **250 NLRB No. 021**

(ineligible in instant case where E told Ees layoff was *indefinite* and that they should accept other employment if offered)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**

(fact that laid off Ees had been referred to as *terminated* in different Bd proceeding immaterial where E had history of recalling former Ees; moreover, fact that these Ees were employed by another E at time of election irrelevant where there was reasonable likelihood of their reemployment)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

6766-2000 Ill

Logan Coca Cola Bottling Company **250 NLRB No. 164**

(Ee not working due to back injury and receiving workmen's compensation held eligible to vote)

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who had been on medical leave and was told there were no openings when he informed E he was able to return to work and had reasonable expectation of reemployment was eligible to vote where E had expressed to individual hope that he would soon return to work and indicated on application form for public aid that firm would rehire him; replacement and termination did not disqualify individual where notification was day after election)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(Ee who was on personal sick leave of absence included in unit where, as of U's recognition demand date, Ee had only been absent 15 weeks, which was not of sufficient duration to make her expectation of reemployment unreasonable; fact that Ee decided not to return to work when her leave of absence terminated is not determinative since E's expectation that Ee would return to work was evidenced by fact that during Ee's leave of absence E carried her on its active payroll and paid her for holidays and vacations)

6766-3000 On leave of absence

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(challenge to ballot of Ee overruled where Ee was not laid off or terminated by E but was on leave whose duration and its extension were not specified by E)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(Ees who were on leaves of absence for work-related injuries and whose leaves were not of indefinite duration included in unit since they had reasonable expectation of returning to work; Ees' absences of 5, 6, and 10 months held not of such length as to establish that they had no expectation of returning to work, particularly since Ees were collecting workmen's compensation for on-the-job injuries)

Valley Rock Products, Inc. **JD-(SF)-285-79**

(individual on leave of absence held Ee and ballot ordered counted, since no evidence employment relationship severed by positive action, where when applying for leave of absence and at time leave granted individual stated verbally and in writing he intended to return to work after leave, and in letter granting leave E asked to be advised of approximate return date; moreover, individual was never removed from E's rolls and continued to work for E during leave when E was short-handed)

6766-5000 On vacation

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(challenge to ballot on ground Ee was not employed on eligibility date, overruled, where Ee was on vacation during period encompassing eligibility date, and Ee continued to work for some time after election)

6766-6500 On preferential hiring list

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**

(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

6766-7000 Dischargees

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

(challenge upheld to ballots of Ees whose discharges prior to election held not unlawful)

Han-Dee Pak, Inc. **249 NLRB No. 107**

(challenge sustained where Ee was not employed by E on date of election and was not determined to be unlawfully discharged)

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(challenge to ballots of Ees, overruled, where they had been unlawfully terminated and were challenged on sole ground that their names were not on eligibility list)

Connecticut Foundry Company **247 NLRB No. 145**

(Ee considered by E to be dischargee for picket line misconduct found not to be dischargee and eligible to vote where E never gave Ee any notice that he had been discharged and Ee never took any action to indicate he abandoned his employment)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(Ees held to be unlawfully discharged, eligible, and challenges to ballots overruled)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(Ees who did not work on date U demanded recognition because they had been informed of their termination on that day or beforehand not included in unit)

6766-8000 Discriminatees

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**

(eligible)

Han-Dee Pak, Inc. **249 NLRB No. 107**

(despite absence of Ees' names on eligibility list, challenges overruled where Ees were unlawfully discharged and therefore entitled to reinstatement at time of election)

Alumbaugh Coal Corporation **247 NLRB No. 112**

(discriminatorily terminated Ee, eligible)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**

(challenge to ballot of unlawfully discharged Ee overruled and ballot opened and counted)

Garden State Motors Co. **JD-160-80**

(challenged overruled)

6766-9000 Alleged discriminatees

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**

(Ee not discriminatorilly discharged prior to election not eligible to vote; challenge to his ballot sustained and ballot not counted)

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(Ees unlawfully discharged, eligible)

6772 EMPLOYEES SEPARATED FROM JOBS

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**

(fact that laid off Ees had been referred to as *terminated* in different Bd proceeding immaterial where E had history of recalling former Ees; moreover, fact that these Ees were employed by another E at time of election irrelevant where there was reasonable likelihood of their reemployment)

6772-6700 Who have or intend to quit

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who had voluntarily quit to avoid loss of social security benefits not eligible)

Connecticut Foundry Company **247 NLRB No. 145**

(Ee who quit his job prior to joining strike and prior to eligibility date not entitled to vote notwithstanding he picketed up until date of election)

6775 EMPLOYEES ON ASSIGNMENT TO NONUNIT JOBS

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor*

6775—Cont.

analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

6778 STRIKERS

6778-6700 **Economic strikers**

6778-6733 Replaced economic strikers eligible in election within 12 months after commencement of strike

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**

(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

Prairie Glove Division, Advance Glove Company **JD-164-80**

(where representation questions arose from E's unilateral withdrawal of recognition from incumbent U, Ees still on economic strike when recognition was withdrawn held part of the bargaining unit for purposes of selecting representation more than 12 months after commencement of strike, absent evidence indicating that the striking Ees had ever been permanently replaced)

6778-6767 Acceptance of new employment

6778-6767-5000 **Eligible unless old job abandoned**

Connecticut Foundry Company **247 NLRB No. 145**

(Ee who found another job because he refused to cross picket line, held job over 1 year and made no attempt to regain old job after picket line was removed found to have abandoned first job and ineligible to vote)

6778-6798 Abandonment of interest in job

Connecticut Foundry Company **247 NLRB No. 145**

(Ee considered by E to be dischargee for picket line misconduct found not to be dischargee and eligible to vote where E never gave Ee any notice that he had been discharged and Ee never took any action to indicate he abandoned his employment)

6784 REPLACEMENTS FOR STRIKERS

6784-3300 **For ULP strikers**

6784-3350 Not eligible

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

6796 PART-TIME OR TEMPORARY SUPERVISORS

6796-5000 **Eligible regardless of employee status at time of election**

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

6798 RELATIVES OF MANAGEMENT

Connecticut Foundry Company **247 NLRB No. 145**

(high school student who was daughter of boss and hired when strike commenced and continued employment over summer excluded from voter eligibility where she intended to and did attend college in fall and also in light of fact that she held *special status* at plant due to family relationship)

6798-2500 **Relationship to management**

Pandick Press Midwest, Inc. **251 NLRB No. 058**

(daughter of plant manager who also has title of *president* not eligible to vote in election and excluded from unit where she lives at home with her father, has more flexible shift schedule than other Ees and her easy access to management gives her status and area of interest distinct from other Ees)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**

(contention that sons, herein excluded from unit, were not employed by their father but by partnership entity owned by father and partner, and that prior Bd decision required GC to prove sons' *special status* for their exclusion, rejected; cited decisions do not relate to issue herein but primarily to Ees of corporations, Congress has definitively excluded child of owner from status of *Ee,* and father herein, sole operator of partnership because of partner's illness, was directly responsible for day-to-day operation of partnership's business)

Han-Dee Pak, Inc. **249 NLRB No. 107**

(challenge to ballot sustained where Ee was son of VP and 50 percent stockholder of E and, thus, deemed employed by his parent and excluded from Ee unit because of relationship to substantial owner)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(son of plant manager, who was college student hired as temporary Ee, excluded from unit where he enjoyed special status in employment relationship in view of higher pay, irregular work hours, and ease with which he was rehired; and it was most likely that he was not financially independent from his father whose influence would tend to predispose son to follow management views and ally him with management)

370 MECHANICS OF ELECTION

0100 GENERALLY

0700 DATE OF ELECTION

0750 FACTORS CONSIDERED IN DETERMINING WHETHER OR NOT TO POSTPONE ELECTION

0750-8400 **Unfair labor practice charges pending**

0750-8467 Not postponed

0750-8467-3300 **Waiver of right to object**

Connecticut Foundry Company **247 NLRB No. 145**
(E who signed agreement in which U agreed that *We will not restrain or coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* (not conventional request to proceed) waived its rights to have election set aside due to ULP's which were part or could have been part of settlement agreement it entered into with U, thereby enabling election to take place before end of posting period, effectively waived its right to protest U's ULP's committed prior to execution of agreement)

1400 PLACE OF ELECTION

2100 TIME OF ELECTION

2800 NOTICE OF ELECTION

2833 RECEIPT OF NOTICE

2833-5000 **Timely receipt**

2833-5050 Length of time posted

Contractors Redi-Mix, Inc. **250 NLRB No. 022**
(certification of election results rather than rerunning election, held warranted notwithstanding E's objection that election notice was not posted until the day before election; E contributed to the delay by failing to post the notice until 3 days after receiving it; Ees had opportunities prior to election to read the notice; parties independently apprised Ees of details of election arrangements; and all active Ees voted)

Associated Air Freight, Inc. **247 NLRB No. 158**
(where E delayed posting of notices until day after receipt thereof, even assuming *arguendo* that posting took place in morning rather than later in day, such late posting, only 2 days before election, failed to give Ees sufficient advance notice of election in view of their various different work schedules, and constituted substantial disregard of posting instructions; *Printhouse* case not controlling)

2850 DEFACED NOTICE

2850-6700 **Marked sample ballot**

2850-6733 For nonunion choice

Armstrong Cork Company **150 NLRB No. 147**
(*altered sample ballot* distributed by E to Ees on day and evening before election, held objectionable, since E's use of *altered Bd ballot* created impression that Bd had allied itself with E's (anti-U) campaign)

2867 FAILURE TO CONDUCT ELECTION IN ACCORDANCE WITH NOTICE

2867-2500 **Change of time**

National Medical Hospital of Compton, d/b/a
Dominguez Valley Hospital **251 NLRB No. 119**
(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertent and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did not cast ballots)

3500 VOTING PROCEDURE AND ELECTION FACILITIES

3533 VOTING PROCEDURE

3533-4000 **Identification of voters (includes use of eligibility list)**

3533-4050 Use of eligibility list

Illinois Valley Community Hospital **249 NLRB No. 058**
(RD properly determined eligibility of individual Ees in question, regardless of parties' agreement, since it is contrary to Act and established Bd policy to agree that a group of Ees, as a class, will not be able to vote when some of those Ees are *prima facie* members of bargaining unit)

3533-7000 **Failure to vote**

3533-7001 Generally

National Medical Hospital of Compton, d/b/a
Dominguez Valley Hospital **251 NLRB No. 119**
(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertent and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did not cast ballots)

4200 BALLOT

4270 USE OF FOREIGN LANGUAGE BALLOT

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(support of U was *clearly manifested* in instant case where challenged ballots of two of E's 15 Spanish speaking Ees were marked *si* in *YES-SI* box rather than in *NO-NO* box; Bd properly counted those challenged ballots as votes in favor of U)

4900 OBSERVERS

4925 APPROPRIATENESS OF INDIVIDUAL AS OBSERVER

4925-0100 **Generally**

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**
(where U designated as official observer w/o his consent Ee who was considered to be anti-U, and U won election by 1 vote, ct denied Bd hearing on E's objections to elections and enforced Bd order as this is not type of practice which impairs validity of election and Ee made effort to counteract inference that his designation demonstrated support for U)

4962 FUNCTIONS AND RESPONSIBILITIES OF OBSERVERS

4962-8000 **Certificatin of conduct of election**

Keystone Metal Moulding Company **249 NLRB No. 075**
(failure of Bd agent to have observers sign certification of conduct form until after second voting session not sufficient departure from normal procedure to raise reasonable doubt as to fairness and validity of election)

4975 CONDUCT OF OBSERVER

4975-2500 **Maintaining voter list**

N.L.R.B. v. South Mississippi Electric Power
Association **616 F.2d 837 (C.A. 5, 1980)**
(setting aside of election not warranted where U observer had Ee voting list and may have briefly compared his list to official list of those who had voted since he could have recorded only small number of those who voted and this occured during period of time when no eligible voters in voting area; thus coercive atmosphere not created)

N.L.R.B. v. South Mississippi Electric Power
Association **616 F.2d 837 (C.A. 5, 1980)**
(setting aside of election not warranted where U observer had Ee voting list and may have briefly compared his list to official list of those who had voted since he could have recorded only small number of those who voted

4975-2500—Cont.

and this occured during period of time when no eligible voters in voting area; thus coercive atmosphere not created)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(setting aside of election not warranted where U observer had Ee voting list and may have briefly compared his list to official list of those who had voted since he could have recorded only small number of those who voted and this occured during period of time when no eligible voters in voting area; thus coercive atmosphere not created)

4975-5000 Electioneering

The Nestle Company **248 NLRB No. 106**
(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

5600 CHALLENGE OF VOTER

6300 MAIL BALLOTING

7000 SECRECY OF BALLOT

7700 COUNT

7725 VALIDITY OF BALLOTS

7725-0100 Generally

San Joaquin Compress

7725-5000 Intent of voter

7725-5050 Wording or lettering on ballot

San Joaquin Compress

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(support of U was *clearly manifested* in instant case where challenged ballots of two of E's 15 Spanish speaking Ees were marked *si* in *YES-SI* box rather than in *NO-NO* box; Bd properly counted those challenged ballots as votes in favor of U)

7725-5083 Miscellaneous markings on ballots other than lettering

7725-5083-6700 Ambiguous - void

San Joaquin Compress

7750 BALLOTS OF CHALLENGED VOTERS

7750-0100 Generally

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(setting aside election not warranted notwithstanding provisions of N.L.R.B. Casehandling Manual were not precisely followed where Bd agent did not seal envelopes containing challenged ballots with tape, there was no label with name of person who sealed envelope, and no memo placed in file stating where challenged ballots were stored, since Bd secured and safeguarded ballots)

8400 MAJORITY CONCEPT UTILIZED BY BOARD

8467 MAJORITY CONSISTS OF MORE THAN HALF WHO CAST VALID BALLOTS

8467-0100 Generally

The Nyack Hospital **248 NLRB No. 043**
(where there are three choices on ballot and none receives majority, election is inconclusive)

9100 ROLE OF BOARD AGENT

9167 FUNCTIONS AND RESPONSIBILITIES

9167-8200 Handling challenged ballots

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(setting aside election not warranted notwithstanding provisions of N.L.R.B. Casehandling Manual were not precisely followed where Bd agent did not seal envelopes containing challenged ballots with tape, there was no label with name of person who sealed envelope, and no memo placed in file stating where challenged ballots were stored, since Bd secured and safeguarded ballots)

9167-8800 Closing of polls

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **251 NLRB No. 119**
(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertent and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did

9500 UNION AFFILIATION AND DISAFFILIATION ELECTIONS

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**
(in vote to affiliate with International fact that vote was not secret or that votes not held in individual bargaining units does not negate validity of affiliation election)

378 CONDUCT INTERFERING WITH ELECTION CHOICE

0100 GENERALLY

0160 ISOLATED CONDUCT

United Broadcasting Company of New York, Inc. **248 NLRB No. 065**

(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner*, nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

0170 CONDUCT MUST AFFECT EMPLOYEES IN UNIT VOTING

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

(contention that unlawful wage increase granted to Ees of E constituting single integrated enterprise with another E cannot serve as basis for setting aside election among latter E's Ees, rejected, since wage increase was likely to have impacted on second E's Ees where there was substantial Ee interchange between relatively small groups of Es' Ees, and second E's drivers made deliveries for, and were paid by, both Es)

0180 TIMING OF CONDUCT

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**

(evidence of misconduct occurring before filing of representation ptn will not be considered by Bd)

0180-3300 Critical period

Lippincott Industries, Inc. **251 NLRB No. 034**

(election ordered set aside where E's ULPs w/i critical period involved interrogation of Ee and unlawful discharge of U adherent 3 hours before election in which U lost by one vote)

Ashcraft's Market, Inc. **251 NLRB No. 025**

(E's announcement of dental plan during critical pre-election period did not warrant setting election aside, since decision regarding plan was made outside critical period and E followed usual custom of announcing benefit changes at Christmas party and putting change into effect on or about January 1)

Moody Nursing Home, Inc. **251 NLRB No. 022**

(truthfull written propoganda concerning U dues distributed along with paychecks on election day not violative as only content of material is relevant to effect on election, not timing)

Marconi, Inc., d/b/a El Caballo **251 NLRB No. 009**

(pre-election threat made by pro-U supervisor, objectionable, where supervisor still occupied his supervisory position and at time of election was in position to thrust his pro-U sympathies onto Ees and to implement his threat)

Armstrong Cork Company **150 NLRB No. 147**

(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*--- concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters)8250 NLRB No. 1339(discharge violative of 8(a)(3) held not objectionable conduct where it occurred prior to filing of representation petition)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters)8250 NLRB No. 1339(ten-percent wage increase, which was not provided for and not outgrowth of wage survey initiated before U activities began but was granted after U activities began and one week before election, violative and objectionable conduct)

The Nestle Company **248 NLRB No. 106**

(while E's conduct before and after initial and runoff elections was called into question by ULP charges, it is only conduct occurring between the two elections which may properly be considered in regard to objections to runoff election)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(bus service provided by E to its Ees week before election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

0180-6700 Cut-off date

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**

(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

1400 STANDARD FOR ELECTION CONDUCT

1401 GENERALLY

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**

(Bd has wide discretion in setting standards for conduct of representation elections and its rulings on effect of particular campaign practices will be set aside only if they are in an abuse of discretion)

1401-2500 ULP conduct a fortiori interference with election

Han-Dee Pak, Inc. **249 NLRB No. 107**

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**

Lyman Steel Company **249 NLRB No. 040**

(ULPs during critical period between date of first election and date of rerun election)

Cardinal Heating and Cooling, Inc. **JD-835-79**

(election set aside due to conduct constituting ULPs during pendency of representation ptn)

1401-5000 'Laboratory conditions' standard

Weyerhaeuser Company **247 NLRB No. 147**

(proper standard in cases involving objections to conduct affecting results of election is whether the conduct reasonably tends to interfere with Ee's freedom of choice in election)

1401-6700 Conduct objectionable which may reasonably be expected to have significant impact on election

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**

(discouraging Ee from voting warranted sustaining U's objection and directing second election)

United Broadcasting Company of New York, Inc. **248 NLRB No. 065**

(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner*, nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**

(in refusing to remand case so RD could conduct new investigation under stricter *Hollywood Ceramics* standards, ct noted that RD found relevant objections had no merit even under *Hollywood Ceramics* (in footnote) and Bd ruled on E's appeal applying explicitly *Hollywood Ceramics* and *General Knit*, assuring itself that RD had considered stricter standard with full vigor)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**

1401-6700—Cont.

(representation election may be set aside only if objectionable activities, when considered as whole, either tended to or did influence outcome of election)

N.L.R.B. v. Gulf States Canners, Inc. **598 F.2d 896 (C.A. 5)**
(*in determining whether election should be invalidated focus should be on effects of particular act on electorate rather than on actor's intent;* test objective rather subjective, and determination should be based on all relevant facts)

1401-6750 De minimis impact of conduct

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(sole ULP established w/i post-ptn period not de minimis since pre-ptn misconduct of twice threatening Ee with plant closure and same Ee victim of post-ptn ULPs added meaning and dimension to related post-ptn conduct)

Flagler Memorial Park **247 NLRB No. 204**
(U's furnishing E fragmentary copy of U's constitution, even if it constituted substantial misrepresentation, not basis for setting aside election, where there was no showing that alleged misrepresentation was material to issue of whether Ees wanted U as their bargaining representative, and E was aware of the misrepresentation almost a month before the election)

1401-7100 Subjective understanding of remarks not competent evidence

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(rumor that U adherent *brandished a gun at anti-U Ees after receiving an anti-union handbill* held false rumor of threat of violence, and even if Ees believed U adherent was pointing gun at them their subjective reactions were irrelevant to question of objectionable conduct)

2100 SPEECHES TO MASSED EMPLOYEES WITHIN 24 HOURS OF ELECTION (PEERLESS PLYWOOD RULE)

Moody Nursing Home, Inc. **251 NLRB No. 022**
(does not prohibit right of any party to circulate campaign literature, on or off premises during critical 24-hour period prior to election)

2800 CONDUCT OF EMPLOYER

2801 GENERALLY

2801-3300 Protections of Section 8(c) of Act

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E's distribution of letters to Ees prior to decertification election in which it urged Ees to consider what would be best for them and their families, stated election would be carefully conducted by Bd, sought to assure Ees regarding job security, not violative, since contained neither promises of benefits nor threats of reprisals and did not warrant setting election aside)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

2824 INTERROGATION

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by interrogation of Ee about her signing U card by nonsupervisory Ee whom Ees could reasonably believe to be speaking for management)

Forcum-Lannom Associates, Inc. (Carpenters Union No. 978) **248 NLRB No. 067**
(objection to single interrogation of Ee overruled where he was found to be nonunit Ee and interrogation thus not to have impacted on free choice of unit members)

Paceco, A Division of Fruehauf Corporation **247 NLRB No. 166**
(on remand Bd adhered to finding of unlawful interrogations during critical period based on timing of interrogations and lack of evidence of valid purpose for questioning Ees on U sentiments)

2827 SOLICITATION OF GRIEVANCES

Moody Nursing Home, Inc. **251 NLRB No. 022**

2832 DISCRIMINATORY TREATMENT OR THREAT THEREOF

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Armstrong Cork Company **150 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*--- concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

Patsy Bee, Inc. **249 NLRB No. 125**
(election set aside where E's ULPs interfered with holding of free and fair election)

Krafcor Corporation **JD-259-80**
(preelection speech threatening Ees with more severe discipline if they selected U as their representative, including examples referring to Ees in context of incidents for which they would be discharged, held unlawful and election set aside)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**
(supervisor's stating on election day that *after today probably everybody will be standing in the unemployment line,* or that *after today probably none of us will be working here any more,* held not threat of plant closure because of Ee U activity; at most, the statement constituted prediction or warning of unemployment w/o regard to outcome of election)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**
(supervisor's stating, in answer to Ee's question as to what would happen if U won election, that *whatever way it goes, we'll all be out of work,* that they would both be out of a job, that *it would all be over with,* or that *whatever way it goes it will all be over with,* held not threat of discharge or plant closure if U won election; at most the statement indicated either that there would be more loss of jobs regardless to outcome of election, or that campaign would be over once election took place)

2835 PREDICTION OF DETRIMENTAL RESULTS OF UNIONIZATION

Armstrong Cork Company **150 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*--- concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

General Dynamics Corporation **250 NLRB No. 096**
(violation where E's total campaign propoganda including posters, handbills, and captive audience speeches gave impression of futility of bargaining, and likelihood of strikes, violence, plant closings and job loss)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(E's leaflet in form of obituary dealing with closing of nearby plant and E's preelection speeches held interference, where evidence did not support E's message that unionization caused closure of other area plants or that unionization would lead to strikes, plant closure, job loss, and other unidentified disasters, and E thereby failed to convey permissible noncoercive prediction that unionization might lead to economic dispute that could result in loss of jobs; Ees take hints of plant closing as coercive threats rather than honest forecasts)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2839 WAGE INCREASES AND OTHER BENEFITS, OR PROMISES THEREOF

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters)8250 NLRB No. 1339(implementation and announcement of improved retirement plan held not unlawful or objectionable conduct where plan was developed and adopted prior to beginning of U activities with timing of its announcement determined by economic, not U-related matters)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(bus service provided by E to its Ees week before election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

2839-1700 Statements concerning benefits

Ashcraft's Market, Inc. **251 NLRB No. 025**
(E's announcement of dental plan during critical pre-election period did not warrant setting election aside, since decision regarding plan was made out-

2839-1700—Cont.

side critical period and E followed usual custom of announcing benefit changes at Christmas party and putting change into effect on or about January 1)

2839-3300 To unit employees

2839-3333 Preceding election

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E's distribution of letters to Ees prior to decertification election in which it urged Ees to consider what would be best for them and their families, stated election would be carefully conducted by Bd, sought to assure Ees regarding job security, not violative, since contained neither promises of benefits nor threats of reprisals and did not warrant setting election aside)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(reinstatement of more favorable sick leave policy to induce Ees to withdraw support from U constituted interference and violation)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(reinstatement of more favorable sick leave policy to induce Ees to withdraw support from U constituted interference and violation)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

2843 DENIAL OR WITHHOLDING OF WAGE INCREASE OR OTHER BENEFITS, OR THREATS THEREOF

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(statement implying that Ees would lose insurance coverage paid for by E if U were certified, unlawful and interference)

BRK Electronics (Electrical Workers, Local Union No. 461) **248 NLRB No. 169**
(E president's failure to explain, in direct response to Ee questions, that election of U would not automatically result in loss or suspension of regularly scheduled vacation benefits warranted setting aside election, since president's failure would tend to create in minds of Ees doubt and uncertainty where none need have existed)

2843-5000 Placing onus for withholding on union

Armstrong Cork Company **150 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*--- concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

2847 RULES RESTRICTING UNION ACTIVITY (See also 512-5012)

2847-5000 Restriction on use of bulletin board

Axelson, Inc., Subsidiary of U. S. Industries, Inc. **251 NLRB No. 044**
(decertification election not set aside notwithstanding Ees' claim that campaign conditions were unfairly tilted in U's favor where E's restriction on Ees' right to post literature in certain nonworking areas was impliedly directed to U, U made no attempt to post or distribute literature on company property, Ees took full advantage of distributing literature in non-restricted areas as well as inadvertant distribution in restricted areas, and E conducted its own campaign in support of Ees' position)

2847-6700 Restriction of employees' meetings or movements within plant

Sherwood-Trimble Medical Building **247 NLRB No. 160**
(requiring U adherent to take breaks at specified times and restricting U adherent to her desk and restricting others as well to disguise restriction of U adherent)

2847-8400 Requiring removal of union insignia

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons did not warrant setting aside of election, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E, and that they were free to wear buttons, and posted notice to that effect on bulletin board)

2847-9200 Requiring wearing of antiunion insignia

The Nestle Company **248 NLRB No. 106**
(invalid enforcement of rule prohibiting wearing of jewelry and nonuniform clothing with U insignia in E's production areas not objectionable where invalid enforcement equally affected both Us in initial and runoff elections)

2855 SURVEILLANCE OR IMPRESSION THEREOF

Woodland Molded Plastics Corp. **250 NLRB No. 020**
(setting aside of election warranted where E's treasurer observed for 10-15 minutes activities between U organizers and Ees taking place on public property; notwithstanding his initial presence was for lawful purpose of keeping U organizers off E's property in response to reports U organizers on company property)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E responded to inquiry about how E knew what was said at U meeting that E had people there who gave E information, thus giving impression of surveillance)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(E's statement that he had a list of yes votes and no votes created impression of surveillance and interfered with election)

2862 VARIOUS ULP's DURING CRITICAL PERIOD

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

Conagra, Inc. **248 NLRB No. 085**
(election set aside in view of E's unlawful interrogation, threats, statements regarding futility of choosing U and that E would bargain from stratch and informing Ees that denial of wage increase was due to U campaign)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(setting aside of election warranted in view of unlawful discharges, refusal to pay strikers for accrued vacation, threats of reprisal and permanent replacement of ULP strikers)

Fluid Packaging Company, Inc. **247 NLRB No. 196**

Tartan Marine Company **247 NLRB No. 073**
(setting aside of election warranted and bargaining order issued in view of E's unlawful interrogation, threats, solicitation of Ees to withdraw U cards, encouraging Ees not to honor Bd subpoena, denial of wage increase and refusal to rehire U adherent)

Thermo King Corporation **247 NLRB No. 048**
(single violation resulting from threat of economic or other reprisals for voting for U held not to warrant inference that it affected election results, since it was too isolated in reference to total circumstances and to number of Ees involved and to vote count in election)

2862—Cont.

J. H. Block

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's truthful representation to Ee prior to election that E had acquired some machinery from defunct operations which had failed because of economic hardships that had befallen such enterprises due to excessive U bargaining demands held not unlawful threat to close plant and not interference)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's alleged statement to Ee prior to election that E would decline to enter into contract with U held not unlawful and not interference, where E had stated that, if U won, E would bargain with it because he was not opposed to unionization of plant, but he cautioned that he could not afford U's economic demands which would affect his corporate solvency)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(preelection promises to Ees of new pension plan and of possible pay raises effective after election, and extensive coercive interrogation of Ees concerning U activities)

Chef's Pantry, Inc. **247 NLRB No. 018**
(interference where E solicited grievances at periodic meetings with Ees; unilaterally instituted new educational benefits program; discriminatorily denied such benefits to leader of organizing campaign; revised long-standing policy prohibiting beards, and shortly before election permitted Ees to grow beards; and during week preceding election asked Ees if they had any complaints which E could remedy)

Union Carbide Corporation **JD-(SF)-13-80**
(solicitation of grievances, asking Ees to speak to coworkers negatively about U and threatening messed up benefits and insurance constituted interference)

2874 INTERFERENCE WITH ORDERLY ELECTION PROCESSES

Moody Nursing Home, Inc. **251 NLRB No. 022**
(E who conditioned Ee's right to vote upon first picking up paycheck committed objectionable conduct as this indicates to Ees that their franchise depends upon sufference of E rather than it being an absolute Sec. 7 right)

Contractors Redi-Mix, Inc. **250 NLRB No. 022**
(certification of election results rather than rerunning election, held warranted notwithstanding E's objection that election notice was not posted until the day before election; E contributed to the delay by failing to post the notice until 3 days after receiving it; Ees had opportunities prior to election to read the notice; parties independently apprised Ees of details of election arrangements; and all active Ees voted)

2878 FURNISHING OF LISTS OF EMPLOYEES NAMES AND ADDRESSES (EXCELSIOR LIST)

2878-1400 **Adequacy of list furnished**

2878-1450 Substantial compliance

St. Francis Hospital **249 NLRB No. 017**
(where excelsior list provided by E contained some incorrect and misleading information; such as, surnames and first and middle initials and E failed to inform R/O of corrected addresses, no violation as no evidence that E intended to willfully frustrate Bd processes; however, if facts revealed such willfulness violation could be found)

2885 PRE-ELECTION PROPAGANDA

2885-2000 **Employer statements**

2885-2033 Kinds of statements

2885-2033-1700 **Maintenance of existing level of benefits**

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2885-2033-4100 **Inevitability of loss or delay of pay raise**

BRK Electronics (Electrical Workers, Local Union No. 461) **248 NLRB No. 169**
(E president's telling Ees, in response to Ee's question, that whether or not Ees received their pay raises prior to vacation would depend on outcome of upcoming election held interference, since comment carried message that pay raises would be affected by results of the upcoming election)

2885-2033-6700 **Inevitability of loss of jobs**

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(E's speech, 2 days before election, telling Ees that if they were not careful, *disaster could hit* and everything could be lost held interference, since reference shortly before election conveyed not too subtle message that vote for U would lead to strikes or plant closing and resulting loss of jobs; E thereby sought to take advantage of Ee concerns about job security and informed Ees that only way to protect their jobs was to vote against U)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(even if E did not engage in specific threats of plant closure, overall impact of E's campaign created coercive atmosphere sufficient to set aside election, where E constantly emphasized themes such as likelihood that strikes, plant closure, and loss of jobs would be direct result of unionization)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(Bd held that, in context of E's specific threats of plant closure, E's repeated statements in its speeches and campaign material constantly referring to U as being strike happy and associating U with strikes, plant closure, and loss of jobs constituted additional objectionable conduct which interfered with election)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(claim that E did not threaten Ees with job loss because it did not directly or explicitly attribute strikes, plant closing, or job loss to unionization, rejected; communications hovering on edge of permissible and impermissible are objectionable since person should be held accountable for use of double intendres at level of his audience rather than of sophisticated tribunals, Scholars, etc.; E's use of leaflet in form of obituary dealing with closing of nearby plant and reference to impending disasters are examples of brinkmanship which overstepped and tumbled over brink)

Louis Gallet, Inc. **247 NLRB No. 013**
(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

2885-2033-7500 **Bargain from scratch**

BRK Electronics (Electrical Workers, Local Union No. 461) **248 NLRB No. 169**
(E president's declaring to Ees that when U got in benefits contained in Ee manual would become *null and void* and that bargaining over those benefits would *start from scratch* warranted setting aside election, notwithstanding president's subsequent qualifying comments that everything would be negotiable; president's qualification of his *null and void* comment was insufficient to overcome the clear message that if Ees elected U, they would lose their existing benefits)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2885-2033-8300 **Inevitability of strikes and shutdown**

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(although E's pamphlet did not directly attribute closing of nearby plant to unionization, distribution of pamphlet held interference, where it made graphic presentation of such plant closing in form of obituary notice which was clear attempt to communicate by form if not words clear message to Ees--unionization caused nearby plant to close and unionization would likewise cause E to close its plant)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(even if E did not engage in specific threats of plant closure, overall impact of E's campaign created coercive atmosphere sufficient to set aside election,

2885-2033-8300—Cont.

where E constantly emphasized themes such as likelihood that strikes, plant closure, and loss of jobs would be direct result of unionization)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**

(E's speech, 2 days before election, telling Ees that if they were not careful, *disaster could hit* and everything could be lost held interference, since reference shortly before election conveyed not too subtle message that vote for U would lead to strikes or plant closing and resulting loss of jobs; E thereby sought to take advantage of Ee concerns about job security and informed Ees that only way to protect their jobs was to vote against U)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**

(E's leaflet in form of obituary dealing with closing of nearby plant and E's preelection speeches held interference, where evidence did not support E's message that unionization caused closure of other area plants or that unionization would lead to strikes, plant closure, job loss, and other unidentified disasters, and E thereby failed to convey permissible noncoercive prediction that unionization might lead to economic dispute that could result in loss of jobs; Ees take hints of plant closing as coercive threats rather than honest forecasts)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**

(claim that E did not threaten Ees with job loss because it did not directly or explicitly attribute strikes, plant closing, or job loss to unionization, rejected; communications hovering on edge of permissible and impermissible are objectionable since person should be held accountable for use of double intendres at level of his audience rather than of sophisticated tribunals, Scholars, etc.; E's use of leaflet in form of obituary dealing with closing of nearby plant and reference to impending disasters are examples of brinkmanship which overstepped and tumbled over brink)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**

(Bd held that, in context of E's specific threats of plant closure, E's repeated statements in its speeches and campaign material constantly referring to U as being strike happy and associating U with strikes, plant closure, and loss of jobs constituted additional objectionable conduct which interfered with election)

PPG Industries, Inc. Shelby Plant, Fiber Glass Division **247 NLRB NO. 114**

(speech permissible campaign propoganda, where E's remarks about strikes were in direct response to U's campaign position that E would not take a strike shutting down operations, and there was nothing in speech that would suggest that Ees would have to strike to secure gains, that strike was inevitable, that E rejected principles of collective bargaining, or that plant would be closed or jobs lost simply because U won election)

Louis Gallet, Inc. **247 NLRB No. 013**

(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

2885-4000 Misrepresentation concerning material issue

2885-4066 Misleading representation of the law

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(E's misstatement that Ees would be required to join U and pay dues if U won election held interference but not 8(a)(1) violation absent threat to Ee rights)

LOF Glass, Inc. **249 NLRB No. 057**

(E's statement on two occasions shortly before election that individual right of Ees to handle grievances personally would be gone once U was voted in warranted setting aside election, since misrepresentation occurred when U did not have opportunity to make effective response and was serious enough to interfere with Ees' free choice; furthermore, Ees frequent use of E's *open door* policy made its reputed loss significant reason to reject U)

LOF Glass, Inc. **249 NLRB No. 057**

(E's statement intending to inform Ees that E's *open door* policy could no longer exist once U was voted in was serious misrepresentation of Ees' right under Sec. 9(a) to present their own grievances and have them adjusted w/o reference to any contractual procedures as long as substance of adjustment was not inconsistent with contract)

2885-4070 Union dues and fees

Moody Nursing Home, Inc. **251 NLRB No. 022**

(truthfull written propoganda concerning U dues distributed along with paychecks on election day not violative as only content of material is relevant to effect on election, not timing)

2885-4093 Board position or document

Lockwood, Kessler

Lockwood, Kessler

Pacific Motel Corp. d/b/a Best Western Motel (Hotel

2885-6000 Comments and instructions concerning election

2885-6025 Urging 'no' vote letters

Community Hospital, Inc. of East St. Louis **251 NLRB No. 149**

(E's letter on day of election urging *No* vote and stating failure to vote was automatic *yes* vote did not warrant setting aside election, notwithstanding elections determined by majority of Ees actually voting, since merely exhortation to vote absent evidence Ees refrained from voting as result of statement)

2885-6050 Posting or distribution of ballot marked 'no'

Pacific Motel Corp. d/b/a Best Western Motel (Hotel

2885-6062 Failure to post or delay in posting election notices

Earle Industries, Inc. **248 NLRB No. 011**

(E's failure to post election notice until 2 days prior to election found not violative where notice was posted beside time-clock which all Ees were required to use and 97 percent of Ees voted in election)

2889 PROUNION CONDUCT OF SUPERVISORS

Marconi, Inc., d/b/a El Caballo **251 NLRB No. 009**

(pre-election threat made by pro-U supervisor, objectionable, where supervisor still occupied his supervisory position and at time of election was in position to thrust his pro-U sympathies onto Ees and to implement his threat)

2897 GIFTS AND OTHER INDUCEMENTS OF VALUE

Don Pizzolato, Inc. **249 NLRB No. 136**

(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

4200 CONDUCT OF LABOR ORGANIZATION

4201 GENERALLY

Connecticut Foundry Company **247 NLRB No. 145**

(fact that Ee serves as U observer at election or is prominant in organizing campaign does not make him U official and Bd is reluctent to set aside election due to conduct of such Ee)

4228 VERBAL THREATS

United Broadcasting Company of New York, Inc. **248 NLRB No. 065**

(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner*, nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

Valley Rock Products, Inc. **JD-(SF)-285-79**

(U representative's unprovoked threats and assaults on E's president and vice-president in bar only six days before election warranted setting aside election where witnessed by some Ees and became widely known to other Ees thus creating climate of tension and coercion)

4235 VIOLENCE

Valley Rock Products, Inc. **JD-(SF)-285-79**

(U representative's unprovoked threats and assaults on E's president and vice-president in bar only six days before election warranted setting aside election where witnessed by some Ees and became widely known to other Ees thus creating climate of tension and coercion)

4242 ADDRESSING OR INTERVIEWING EMPLOYEES

4242-2500 Conversing with employees in immediate vicinity of polling area

The Nestle Company **248 NLRB No. 106**

(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls

4242-2500—Cont.

and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

4270 PRE-ELECTION PROPAGANDA

4270-3300 Marked ballots and election notices

Armstrong Cork Company **150 NLRB No. 147**
(*altered sample ballot* distributed by E to Ees on day and evening before election, held objectionable, since E's use of *altered Bd ballot* created impression that Bd had allied itself with E's (anti-U) campaign)

4270-5000 Appeals to racial and/or sexual prejudice

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(contention by E, in objecting to election, that U had created racially inflamatory atmosphere precluding fair election, rejected, where E failed to *supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election*)

4270-6700 Misrepresentation concerning material issue

4270-6705 Union dues and initiation fees

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(it is permissible for U to waive initiation fees for or to confer any other benefit upon those who join before representation election only if it does same for those who join after election)

4270-6706 Employees capable of evaluation

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(*Monmouth Medical Center* distinguished in that U's impairment of Bd's neutrality was more substantial and pervasive than that caused by U leaflet in instant case where leaflet did not claim E had been judged of any violation, and overstatements amounted only to layman's rendition which was unlikely to substantially mislead voters as to status of Bd's action)

4270-6740 False wage data - employer's other plants

N.L.R.B. v. Van Gorp Corporation **615 F.2d 759 (C.A. 8) (1980)**
(U official's informing unit Ees on night before election that U's contract with E's owner at another plant allowed twelve cents per quarter for cost of living adjustment (COLA) warranted setting aside election, since in fact the contract provided only twelve cents per year and COLA was important issue in the campaign, and U's last minute misrepresentation was accompanied by U supporters' threatening three Ees opposed to U and assaulting a fourth)

4270-6750 Timing, opportunity to rebut

N.L.R.B. v. Trans Continental Airlines, Inc. **614 F.2d 1116 (C.A. 6) (1980)**
(objection on grounds of alleged misrepresentation overruled where E held scheduled meeting with his Ees but failed to rebut U statements)

N.L.R.B. v. Van Gorp Corporation **615 F.2d 759 (C.A. 8) (1980)**
(U official's informing unit Ees on night before election that U's contract with E's owner at another plant allowed twelve cents per quarter for cost of living adjustment (COLA) warranted setting aside election, since in fact the contract provided only twelve cents per year and COLA was important issue in the campaign, and U's last minute misrepresentation was accompanied by U supporters' threatening three Ees opposed to U and assaulting a fourth)

4270-6760 False wage data - rival or other employers or other industries

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **251 NLRB No. 119**
(where U distributed pamphlets to E's Ees camparing their wage rates with those of Ees in county (public) hospitals and in private hospitals and misrepresented to Ees that U had negotiated both public and private hospitals' contracts, when in fact, had negotiated only private hospitals' contracts, Bd dismissed objection as private hospital pay rates were substantially higher than pay rates cited at public hospitals and, therefore, Ees would not have been induced to vote for U because of lower rates at public hospital)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(where E raised issue of conditions at another plant to counter U's arguments as to unionization benefits and stated that the other plant did not have contract with this U, this U's handbill stating that other plant and its U had agreed on contract providing for $9,000 insurance policy held not interference-since statement of future contract provisions did not constitute misrepresentation; nor was statement of wages of assembler there interference notwithstanding incomparability of his required skills with those of assemblers at E's herein, since E did not use available information to counter U's agreement)

4270-6770 Statements concerning employer conduct

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. **599 F.2d 1057 (C.A. 9, 1979)**
(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

4270-6785 NLRB rulings and decisions

Kinney Shoe Corporation **251 NLRB No. 078**
(mischaracterization of Bd settlement agreement is serious misrepresentation which warrants setting aside election because Bd is unable to intervene during election campaign if its documents or processes have been misrepresented)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(*Monmouth Medical Center* distinguished in that U's impairment of Bd's neutrality was more substantial and pervasive than that caused by U leaflet in instant case where leaflet did not claim E had been judged of any violation, and overstatements amounted only to layman's rendition which was unlikely to substantially mislead voters as to status of Bd's action)

4270-6787 Misstatement of law

Connecticut Foundry Company **247 NLRB No. 145**
(newspaper article based on interview with U representative stating that Bd had dismissed all charges filed against U when in actuality parties had entered into settlement agreement was not sufficient misrepresentation to interfere with election, moreover E had 3 weeks in which it could have corrected impression given by article and it did nothing)

4277 PAYMENT TO VOTERS ACTING AS ELECTION OBSERVERS

Easco Tools, Inc. (United Steelworkers of America, AFL--CIO--CLC) **248 NLRB No. 105**
(where U paid two Ees more than their regular pay for 8-hour workday for serving as election observers for U, regardless of whether they returned to work or took off from work after election, and Ees spent less than a total of two hours each in connection with their assignment as observers, Bd set aside the election since integrity of Bd election is better served by directing new election in the circumstances)

4284 GIFTS AND OTHER INDUCEMENTS OF VALUE

4284-5000 Initiation fees

Gulf Coast Automotive Warehouse Company, Inc. **248 NLRB No. 058**
(ALJ upon remand from Bd and ct found E failed to show that U engaged in pre-election misconduct involving **Savair rule** which would warrant setting aside results of election)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(it is permissible for U to waive initiation fees for or to confer any other benefit upon those who join before representation election only if it does same for those who join after election)

N.L.R.B. v. Mike Yurosek

4284-8000 Waiver or reduction of union dues

Weyerhaeuser Company **247 NLRB No. 147**
(*Savair Manufacturing Co.* 414 U.S. 270 standard of conduct applies to pre and post petition conduct)

4284-9900 Other

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(payments to Ees for 1 to 3 hours spent after normal working day giving statements in aid of an investigation of ULP charges held not interference with election in view of purpose of payments, recipients' understanding thereof, and timing, some 4 weeks before election)

N.L.R.B. v. Gulf States Canners, Inc. **598 F.2d 896 (C.A. 5)**
(effect of U's gifts of gasoline to Ees on electorate, rather than intent of U, should be criteria in determining whether election should be set aside; all relevant facts should be considered including whether size of benefit conferred bore proper relationship to U's stated purpose in conferring it, number of Ees receiving benefit, views of Ees concerning purpose of gifts, and timing of gifts)

5600 EMPLOYEE CONDUCT

5625 RANK-AND-FILE UNIT EMPLOYEES

5625-3300 Predictions and threats of physical violence

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(rank-and-file Ee's statement that female Ee had better go home and watch her kids held voicing of annoyance over female Ee's ceaseless palaver rather than threat of retaliatory action)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**

5625-3300—Cont.

(rumor that U adherent *brandished a gun at anti-U Ees after receiving an anti-union handbill* held false rumor of threat of violence, and even if Ees believed U adherent was pointing gun at them their subjective reactions were irrelevant to question of objectionable conduct)

5625-6700 Statements not attributable to the parties

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(*misrepresentations not attributable to either party require setting aside of election only when they create such an atmosphere of fear and violence that free and fair elections have been rendered impossible*)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(Ee actions and statements that are not attributable to U are generally entitled to less weight and cannot by themselves be used to set aside representation election)

N.L.R.B. v. Mike Yurosek

5625-6767 Having insubstantial impact

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(Ee's statement that E intended to rehire unpopular supervisor after election did not warrant setting aside election where Ee did not claim outcome of election would influence E's decision on rehiring and absent evidence statement influenced Ees' votes)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(Ee's statement that E intended to rehire unpopular supervisor after election did not warrant setting aside election where Ee did not claim outcome of election would influence E's decision on rehiring and absent evidence statement influenced Ees' votes)

5625-8300 Threats to other employees

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(threat of one member of in-plant organizing committee to take another member to ct because he quit going to U meetings, not unlawful, since threat was of peaceful action from U, not individual)

5650 EMPLOYEES OUTSIDE BARGAINING UNIT

5650-2500 Supervisors

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(if E knows that its supervisory personnel are advocating U and takes no action to dissipate effect, such advocacy cannot be used as basis for setting aside election)

7000 CONDUCT OF NON-PARTICIPANTS IN ELECTION

8400 ELECTIONEERING AT OR NEAR POLLS WHILE OPEN

8401 GENERALLY

Northern Telecom, Inc. **250 NLRB No. 085**
(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

Cumberland Nursing

8420 ORAL COMMUNICATION TO VOTERS

8420-3300 Location of communication

8420-3325 Conversation within voting area

8420-3325-5000 By union (representative, observer, or agent)

The Nestle Company **248 NLRB No. 106**
(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

8420-3350 Conversation just outside voting area or within designated 'no electioneering' area

8420-3350-5000 By union (representative or agent)

Midwest Stock Exchange, Inc.; et al. v. N.L.R.B. **620 F.2d 629 (C.A. 7, 1980)**
(Bd finding of no interference in U observer's conversation with voters at polling place during election misapplied Bd's Milchem decision, since 5-minute conversation herein was considered by Bd sufficient under Milchem to void election, regardless of conversation's substance and effect; Bd predicated its decision upon context of observer's conversation and ignored last minute distraction of voters as well as *appearance of electioneering* that might result from prolonged conversation, and fact that, as in Milchem, conversation was not *one-to-one*)

8430 MERE PHYSICAL PRESENCE

8430-2500 Within voting area

8430-2575 Others

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(objection that U supporters were permitted to stay in polling area after casting their ballots, overruled; at most some Ees waiting in line said vote yes and others vote no, which did not constitute coercive and disruptive conduct)

8430-5000 Just outside voting area or within designated 'no electioneering' area

8430-5050 By union official or representative

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. **599 F.2d 1057 (C.A. 9, 1979)**
(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

8430-7500 Away from immediate vicinity or outside designated 'no electioneering' area

Northern Telecom, Inc. **250 NLRB No. 085**
(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(objection that U supporters were permitted to stay in polling area after casting their ballots, overruled; at most some Ees waiting in line said vote yes and others vote no, which did not constitute coercive and disruptive conduct)

8440 WEARING OF INSIGNIAS

8440-3300 Within voting area

8440-3350 By observer

The Nestle Company **248 NLRB No. 106**
(objection overruled where observer for 1 U wore bumper sticker of his U on his shirt and observer for other U wore smaller U button on his shirt)

8450 USE OF PLACARDS

8450-6700 Outside voting area

Northern Telecom, Inc. **250 NLRB No. 085**
(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

8460 DISTRIBUTION OF CAMPAIGN LITERATURE

8460-2500 Time of distribution

Moody Nursing Home, Inc. **251 NLRB No. 022**
(E who conditioned Ee's right to vote upon first picking up paycheck committed objectionable conduct as this indicates to Ees that their franchise depends upon sufference of E rather than it being an absolute Sec. 7 right)

9000 ACTIONS OF BOARD OR BOARD AGENT

385 POST-CERTIFICATION AND UNIT CLARIFICATION ISSUES

0100 GENERALLY

1200 VALIDITY OF CERTIFICATION

2500 AMENDMENT OF CERTIFICATION

2525 CHANGE IN REPRESENTATIVE

2525-1700 Substitution of local for certified international

Duquesne Light Company and Its Wholly Owned Subsidiary, Allegheny County Steam Heating Company (System Council U--10, Electrical Workers) **248 NLRB No. 168**

(ptn to amend certification to substitute local Us for international U as certified bargaining representative granted, since amendment's effect would be no more than recognizing local Us de facto status as exclusive bargaining representative and unit Ees had also sanctioned status of local Us as their bargaining representative not only by acquiescing in local Us' principal role in negotiations and administration of agreements, but also by ratifying contracts recognizing local Us as their bargaining representative)

2525-8400 Employee approval of substitution of representative

2525-8450 Approval by vote on issue

2525-8450-4000 Eligibility to vote

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**

(selection of delegates to state annual convention from volunteers by division president at meeting where membership had opportunity to appear and express their desires not violative of by-laws or denial of due process)

2525-8450-4033 Unit members

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**

2525-8450-6000 Regularity of voting procedures

Duquesne Light Company and Its Wholly Owned Subsidiary, Allegheny County Steam Heating Company (System Council U--10, Electrical Workers) **248 NLRB No. 168**

(Bd more lenient towards voting procedures used by locals to obtain unit Ees' approval for AC where vote is on substitution of locals for International with which they are affiliated, rather than merger or affiliation)

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**

(absence of secret ballot on affiliation not violation of by-laws or denial of due process where membership w/o opposition instructed delegate to vote for permanent affiliation, and no one requested or moved for secret ballot; as to absence of quorum, division had modified (de facto) the quorum provision to comport with average attendance)

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**

(when collective bargaining representative affiliated with International U and E refused to bargain with U after this point, E violated Act where successor U is same bargaining entity as predecessor U, and since it had right to make its own policy determinations, negotiate contracts, call strikes, and retained right to establish and keep its own dues, local U is autonomous from International; vote in favor of affiliation was unanimous, conformed to U constitution; moreover, fact that vote was not secret or separate vote by unit Ees not held does not negate validity as Us are not held to Bd's own election standards)

2525-8450-8000 Approval by majority of those voting

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**

5000 SUSPENSION OR REVOCATION OF CERTIFICATION

5050 GROUNDS FOR SUSPENSION OR REVOCATION

5050-7500 Failure to represent employees

5050-7533 Conflict of interest

Sierra Vista Hospital, Inc. **249 NLRB No. 066**

(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflict of interest under *Sierra Vista*, 241 NLRB No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

7500 UNIT CLARIFICATION

7501 GENERALLY

7501-2500 Board authority

7501-2501 Generally

Shop Rite Foods, Inc. **247 NLRB No. 143**

(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israil Medical Center, 231 NLRB 295 (1977);* ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarify unit established by agreement of parties)

7501-2512 No clarification where question of representation exists

James A. McBrady, Inc. and Maine Erection, Inc. **247 NLRB No. 017**

(Bd refused to clarify unit when job classification was in existence at time previous collective bargaining agreement entered into and this agreement makes no specific reference to job classification; further, Ees in this job classification perform function separate and apart from other Ees; thus, ptn raises QCR which precludes Bd from changing previously established bargaining unit w/o first holding election)

7501-2593 Availability of clarification for modification of unit description

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(during mid-term contract negotiations Bd would refuse to entertain mid-term U C ptn to exclude alleged supervisors where parties were aware of unit placement problems when contract executed; to do so would be disruptive of established bargaining relationships)

7533 ISSUES RESOLVABLE BY CLARIFICATION PROCEEDING

7533-2000 Job classification coverage

7533-2001 Generally

7533-2001-5000 Intention of parties to include or exclude classification

Shop Rite Foods, Inc. **247 NLRB No. 143**

7533-2020 Classifications existing at time of certification or recognotion

7533-2020-3300 Employees sought excluded from prior representation

James A. McBrady, Inc. and Maine Erection, Inc. **247 NLRB No. 017**

(Bd refused to clarify unit when job classification was in existence at time previous collective bargaining agreement entered into and this agreement makes no specific reference to job classification; further, Ees in this job classification perform function separate and apart from other Ees; thus, ptn raises QCR which precludes Bd from changing previously established bargaining unit w/o first holding election)

7533-2060 Classification established subsequent to certification or recognition

Metromedia, Inc.---KMBC--TV **247 NLRB No. 057**

(Bd clarified certified unit of cameramen to also include cameramen using newly introduced minicams where supervision same for minicam cameramen as for film cameramen, operation of both types of cameras and mechanical skills involved are same, and most important, job functions - video gathering of news - are essentially identical)

385-POST-CERTIFICATION AND UNIT CLARIFICATION ISSUES

7533-4000 **Expanded or changed operations following certification or voluntary recognition**

7533-4060 New operations

Local 282, Teamsters (Mid-County Transit Mix, Inc.) **250 NLRB No. 076**

(when 2 affiliated companies merged into 3rd company (successor) and remaining Ee of one affiliated company transferred to unit of successor, Bd held Ee accretion to successor's bargaining unit notwithstanding member of different U)

7533-4080 Reorganization of operations

United Hospitals, Incorporated and The Children's Hospital, Inc. **249 NLRB No. 063**

(where 3 E members of 21 E multi-E association planned merger and admitting clerks of 2 of these 3 E's were unrepresented by U, U's request that unrepresented Ees be treated as accretion to unit denied because out of 21 Ee groups only 2 were represented by U and Bd will not add unrepresented Ees to multi-E unit on piece meal basis, notwithstanding all admitting clerks would be on 1 payroll, work in single admitting department, perform similar job functions under common supervision)

7533-8000 **Consolidation of existing units represented by same petitioner**

7533-8050 Rejection of clarification would leave parties no early course of relief

Shop Rite Foods, Inc. **247 NLRB No. 143**

(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israel Medical Center, 231 NLRB 295 (1977);* ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarify unit established by agreement of parties)

393 PROCEDURE IN REPRESENTATION PROCEEDINGS

0100 GENERALLY

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

1000 PARTIES

2000 INTERVENTION

2050 INTERVENTION BEFORE HEARING

Union College **247 NLRB No. 069**
(motion by Ees' Association to intervene in instant case denied and cross ptn by Ees' association for election in another case dismissed, since association had not submitted timely showing of interest that predated election hearing)

3000 SERVICE OF DOCUMENTS

4000 SUBPOENAS

4001 GENERALLY

4001-5000 Nature and scope

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(RD's denial of E's interim appeals from rulings of hearing officer sustained, where E's subpena sought complete minutes of Nurses' Association's board of directors and those of its region, hearing officer ruled that he would conduct in camera inspection of portions of minutes not voluntarily produced by Association, and further granted Association's mtn to quash E's subpena for minutes of Association's administration commission; evidence sought is not relevant in view of Bd's ruling that E's conflict-of-interest theory concerning whether Association is qualified to represent Ees was w/o merit)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(E's subpena for production from Nurses' Association, on statewide or regional basis, of documents concerning its employment-related assistance to supervisors who are members of Association held not improperly limited by RD in its geographical scope to Es w/i county; in view of Bd's finding that E's conflict-of-interest theory concerning Association's assistance to supervisors was w/o merit, additional evidence obtained under subpena would not be relevant)

5000 EXPEDITED ELECTION PROCEDURE

6000 PRE-ELECTION PROCEDURE

6007 FILING OF PETITION

6007-1700 Timeliness

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**
(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

6007-3300 Adequacy

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**
(U's contention that deauthorization ptn should be dismissed since appropriate unit should include both office Ees and installers and technicians rather than only office Ees as pattern of bargaining has been to include separately certified units under one contract rejected, where no intent to merge two units into single unit as evidenced by reference in supplemental agreement to 2 units)

6027 WITHDRAWAL OF PETITION

6027-2500 Basis of withdrawal

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

6034 DISMISSAL OF PETITION

6034-2800 Basis for dismissal

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**
(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

Union College **247 NLRB No. 069**
(motion by Ees' Association to intervene in instant case denied and cross ptn by Ees' association for election in another case dismissed, since association had not submitted timely showing of interest that predated election hearing)

William Moses, Estate of Bella Moses **247 NLRB No. 20**
(ptn dismissed since no qcr existed where intervening incumbent U's disclaimer of interest in representing petitioned-for unit of Ees was untimely and ineffective attempt to withdraw from multi-E bargaining)

6054 CONSENT ELECTION AGREEMENTS

6054-0100 Generally

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where consent election agreements have been approved and elections held, Bd will look to circumstances to ascertain parties' intent or agreement and then if issue is still in doubt declare the agreement defective and the election a nullity)

6054-6700 Agreements for determination of post election issues by Board

6054-6750 Stipulation of unit

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where parties incorporated Norris-Thermador lists by reference into consent election agreements rather than describing the units, Bd found that they had consented to requirement that decertification elections be held in previously recognized units, and that units described in the ptns conformed to existing contractual units with minor variances)

6061 BLOCKING CHARGE POLICY

6061-3300 Pending charge of ULP affecting unit employees

Gould, Inc. v. Robert S. Fuchs, et al. **486 F.Supp. 164 (D Ct. CT, 1980)**
(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

6061-3359 Deferral of decertification proceeding required in face of refusal to bargain charge

W

6061-3362 Dismissal of petition

Carol Estes and 166 Other Warehouse Facility Employees v. N.L.R.B. **No. 78-4068 (D Ct. KS, Jan. 5, 1979 (unreported))**
(application of *blocking charge rule* to decertification ptn during pendency of ULP charges filed by U and Cs issued on behalf of Bd concerning charges, held appropriate, since it was reasonable to assume RD, at time of dismissal of ptn, had some idea whether U's charges were substantial and whether representation election could fairly be held)

6068 HEARING

6068-0100 Generally

The North American Soccer League, etc., et al. v. N.L.R.B. **613 F.2d 1379 (C.A. 5) (1980)**
(soccer league not denied due process by Bd's refusal to conduct representation hearing in any city other than a named city, where there was presence of league offices and records in the named city and there was testimony at hearings by representatives of some of the clubs)

6081 DECISION ON PETITION

6081-4000 Review of Regional Director's decision

6081-4050 Review limited to record

Bon Secours Hospital, Inc. **248 NLRB No. 019**
(where E's brief to Bd contains factual statements not in record of hearing Bd will accept brief but will not rely on facts not established in record)

7000 POST-ELECTION PROCEDURE

7011 FILING OF CHALLENGES AND OBJECTIONS TO ELECTION

7011-2000 Time for filing

Monier Roof Tiles **249 NLRB No. 092**
(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

7011-2075 Within 3 days of furnishing revised tally of ballots

Staco, Inc. **248 NLRB No. 171**
(where E was not present at opening of certain E's ballot, Bd rejected E's contentions that it was denied due process and that Ee's ballot should be declared void, notwithstanding E's assertion that its counsel did not receive RD's letter advising parties of date and time when Ee's ballot would be opened until 3 days after date scheduled for opening, one day after E had been furnished revised tally; E failed to either file objection to revised tally, or request for extention of time in which to do so)

7011-4000 Statement of reasons for objections

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**
(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

7011-5000 Obligation to furnish evidence in support of objections

7011-5000 Obligation to furnish evidence in support of objections

Monier Roof Tiles **249 NLRB No. 092**
(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

7011-8000 Service on other parties

St. Johns Smithtown Episcopal Hospital **250 NLRB No. 077**
(petitioner's mtn to dismiss intervenor's objections to election, granted, where intervenor did not comply with Bd's R/R Sec. 102.69(a) by serving its objections on petitioner 2 months after election, and illness of intervenor's counsel at time objections were filed was not *valid and compelling reason why compliance is not possible*; nor was there *an honest attempt to substantially comply* with Bd's R/R on service of objections in intervenor's belated service on petitioner after being informed that it had failed to conform to R/R)

Platt Brothers **250 NLRB No. 049**
(E's mtn to dismiss petitioner's objections for lack of timely service of copy of objections on opposing party granted where E did not receive copy until 2 weeks after filing date; absence or prejudice to party by lack of timely service irrelevant; also fact that Bd agent read objections verbatim to E 4 days after objections filed or petitioner forwarding objections to E immediately upon being served with E's mtn to reject objections constitutes compliance with Sec. 102.69(a))

Auto Chevrolet, Inc. **249 NLRB No. 070**
(in order to maintain orderly processing of R cases, there must be adherence to Bd's R/R, and time requirements in R/R will not be ignored on singular ground that party has not produced any evidence that it was prejudiced by another party's failure to comply with service requirements)

Auto Chevrolet, Inc. **249 NLRB No. 070**
(E's mtn to dismiss objections, granted, where U established neither *an honest attempt to substantially comply* with service requirement under Bd's R/R Sec. 102.69(a) nor *a valid and compelling reason why compliance was not possible*, since U did not justify its failure to comply by claiming that Regional Office advised E via telegram that U was filing objections and, thus, E could have called U if it had not received copy, and by claiming that U representative made personal service of copy to E's secretary)

Auto Chevrolet, Inc. **249 NLRB No. 070**
(in finding U failed to show honest attempt to substantially comply with service of objections on E under Bd's R/R Sec. 102.69(a), Bd noted that it was not signalling return to inflexible definition of *immediately* and it was not suggesting that, in all circumstances,, it would consider a few days' delay as barring objecting party from establishing substantial compliance; however, U's service on E 7 working days (11 calendar days) late, in conjunction with U's misreading of R/R, did not constitute substantial compliance)

Auto Chevrolet, Inc. **249 NLRB No. 070**
(contention that Bd's R/R should be changed so as to provide that RDs will serve copies of objections to election on opposing party in procedure similar to RD's service of ULP charges on charged party, rejected, since such service is a courtesy only and RDs do not have responsibility for serving other parties' documents in any Bd proceeding, nor is there any compelling reason to make exception to Bd's general practice by imposing on RDs obligation to serve copies of objections)

Auto Chevrolet, Inc. **249 NLRB No. 070**
(U's misreading of Bd's R/R Sec. 102.69(a) as allowing 5-day period for service of objections on E upon filing of timely objections did not justify its failure to *immediately* make such service as required by R/R)

Union Carbide Corporation **JD-(SF)-13-80**
(belated receipt of objections by E held not to nullify them where U made honest attempt to comply with rules and no prejudice due to delayed receipt was shown)

7022 INVESTIGATION OF CHALLENGES AND OBJECTIONS

7022-0100 Generally

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(objecting party must present specific evidence to RD in order for him to determine if investigation is required)

7022-1700 Regional Director's authority to resolve issues on basis of investigation

R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
RD not required to interview Ees named in C where objecting party failed to allege any specific events concerning specific people with respect to alleged U threats)

7022-3300 Obligation of protesting party to furnish supporting evidence

Cumberland Nursing

Judd Valve Co., Inc. **248 NLRB No. 018**
(in R case involving challenged ballot, Bd did not consider statement by U in its exceptions to RD's failure to contact Ee who was willing to give a sworn affidavit where U attached to its exceptions a signed statement prepared by Ee but failed to state when Ee's name was given to RD, and why signed statement was not submitted to RD; see R/R Sec. 102.69(g))

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(conclusory allegations are not sufficient to obtain hearing in representation case; losing party bears heavy burden)

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(RD not required to interview Ees named in C where objecting party failed to allege any specific events concerning specific people with respect to alleged U threats)

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(burden is on objecting party to present specific evidence to warrant setting aside election, not Bd staff)

7022-5000 Consideration of conduct not included in objections by parties

Moody Nursing Home, Inc. **251 NLRB No. 022**
(RD may set aside election based on conduct discovered during investigation, notwithstanding that conduct was not subject of specific objection)

Airlines Parking, Inc. **250 NLRB No. 081**

Chef's Pantry, Inc. **247 NLRB No. 018**
(although RD, in setting objection to election for hearing, did not specifically mention incident giving rise to E's objection to receipt of evidence

7022-5000—Cont.

relating thereto, RD's order directing hearing did not purport to forbid hearing of any evidence fairly encompassed by objection in question)

7022-8300 Waiver of challenges or objections

Connecticut Foundry Company **247 NLRB No. 145**
(E who signed agreement in which U agreed that *We will not restrain or coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* (not conventional request to proceed) waived its rights to have election set aside due to ULP's which were part or could have been part of settlement agreement it entered into with U, thereby enabling election to take place before end of posting period, effectively waived its right to protest U's ULP's committed prior to execution of agreement)

7033 HEARING ON CHALLENGES AND OBJECTIONS

7033-0100 Generally

Chef's Pantry, Inc. **247 NLRB No. 018**
withdrawal of objection to election did not preclude consideration of refusal to bargain allegation, or any conduct alleged in remaining objections which relates to it; pleadings fully apprised E of matters to be litigated and GC opened no *new areas* at hearing which were not covered by amended consolidated complaint, extant charges upon which it was based, and objections to be heard)

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**
(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with no quasi about it, concerning which cts should not interfere save for the most glaring discrimination or abuse* however, if party demonstrates by prima facie evidence existence of *substantial and material factual issues which if resolved in its favor, would require setting aside election* hearing is required)

7033-1100 Required where substantial and material issues of fact

Evans Rotork, Inc. **251 NLRB No. 073**
(only required where moving party presents *prima facie* showing of issues which would warrant setting aside election)

Cumberland Nursing

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(hearing was not required on whether alleged misrepresentation had impact on election and whether attributable to U since no material issues of fact existed where E failed to come forward with specific evidence to refute RD's finding that statement did not affect Ees' votes)

The Cyril and Julia C. Johnson Memorial Hospital v. N.L.R.B. **595 F.2d 1208**
(no hearing required where *conclusionary allegations were insufficient to present substantial and factual issues,* no issue of credibility involved and decision turned on inferences to be drawn from undisputed facts)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(Bd acted w/i discretion when it refused to hold hearing where facts presented by objecting party, even if credited, would not warrant setting election aside)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(no statutory requirement for post-election evidentiary hearing on objections and unless there are substantial and materials issues of fact; Bd's own investigation is sufficient; and here E's contention that Bd agents failed to follow case handling manual concerning handling of challenged ballots in minor respects does not warrant setting aside election)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(hearing not required in every case to determine validity of objections to Bd-conducted election)

7066 EXCEPTIONS TO REPORT AND BRIEFS

7066-4000 Service

Auto Chevrolet, Inc. **249 NLRB No. 070**
(in order to maintain orderly processing of R cases, there must be adherence to Bd's R/R, and time requirements in R/R will not be ignored on singular ground that party has not produced any evidence that it was prejudiced by another party's failure to comply with service requirements)

7066-6000 Adequacy

The Nyack Hospital **248 NLRB No. 043**
(hearing officer's recommendation to sustain objection adopted pro forma where objection was only to recommendation that election be set aside and new election ordered rather than to resolution of objection on merits)

7077 DECISION ON OBJECTIONS OR CHALLENGES

7077-4000 Review of Regional Director's decision

7077-4025 Effect of consent election agreement

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where parties incorporated Norris-Thermador lists by reference into consent election agreements rather than describing the units, Bd found that they had consented to requirement that decertification elections be held in previously recognized units, and that units described in the ptns conformed to existing contractual units with minor variances)

7077-4033 Grounds for request to Board

7077-4033-3000 Change in Board policy or law

Gaithersburg-Washington Grove Fire Dept., Inc. **251 NLRB No. 045**
(remand to RD for hearing to determine if E now has sufficient control over employment relations to enable it to bargain where new county regulations are radically different from those under which original decision rendered)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(where RD made decision on objections to elections using *Hollywood Ceramics* standard and Bd later adopted less stringent *Shopping Kart* standard before returning to former standard and Bd's adoption of RD's decision occurred under latter standard, *Shopping Kart*; no denial of due process where Bd merely adopted report as written as it is not assumed that Bd considered objection under standard other than that used by RD)

7077-4033-6000 Prejudicial procedural error

Monier Roof Tiles **249 NLRB No. 092**
(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

7077-6000 Decision by Board

7077-6033 Remand for revised tally

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(where R case consolidated with C cases for limited purpose of taking evidence on challenged ballots, RD ordered to open ballots of Ees held eligible and issue certification if U received majority, where U never filed objections to election, notwithstanding E held to have committed ULPs)

7077-6050 Direction of another election

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(where challenged ballots were determinative in election, objections to which were found meritorious, RD directed to open and count challenged ballots and to issue certification of representative if revised tally shows U majority; in event tally shows no majority, RD directed to set aside election and direct second election)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(at such time as RD deems appropriate)

Custom Coating

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

The Nyack Hospital **248 NLRB No. 043**
(where there are three choices on ballot and none receives majority, election is inconclusive)

Louis Gallet, Inc. **247 NLRB No. 013**
(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

7077-6083 Certification of representative

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

(where challenged ballots were determinative in election, objections to which were found meritorious, RD directed to open and count challenged ballots and to issue certification of representative if revised tally shows U majority; in event tally shows no majority, RD directed to set aside election and direct second election)

7077-6095 Disposition of objections to election

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**

(where it determined consent election agreement was not inadequate, Bd remanded case to RD for disposition of objections to election including allegation that discrepancy between units in notices of election and Norris-Thermador lists in consent election agreement confused Ees and for investigation and determination as to effect of omission of classifications in technical unit composition in Norris-Thermador lists)

7088 RECORD

7088-3300 R&R 102.69(g)

Keystone Metal Moulding Company **249 NLRB No. 075**

(affidavits of E taken by RD during investigation of objections to election considered by Bd upon remand after finding by ct; Bd must make decision based on complete record)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**

(failure of RD to include affidavits obtained during investigation of objections to election in file as part of record on review is not *per se* basis for setting aside report)

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**

(failure to include affidavits in record is harmless error where E included contents of affidavits in his exceptions to RD's report and documents were adequately summarized in E's Request for Review)

8000 UNIT CLARIFICATION PROCEDURE

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(during mid-term contract negotiations Bd would refuse to entertain mid-term U C ptn to exclude alleged supervisors where parties were aware of unit placement problems when contract executed; to do so would be disruptive of established bargaining relationships)

Shop Rite Foods, Inc. **247 NLRB No. 143**

(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israel Medical Center, 231 NLRB 295 (1977)*; ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarity unit established by agreement of parties)

9000 AMENDMENT OF CERTIFICATION PROCEDURE

400 BARGAINING UNITS

401 GENERALLY

1200 STATUTORY OBJECTIVES IN DEFINING BARGAINING UNITS

2500 POWER AND DISCRETION OF BOARD

2525 BOARD AUTHORITY UNDER STATUTE

Big Y Foods, Inc. **251 NLRB No. 123**
(E's contention that Bd had not fulfilled its statutory duty to make unit determination in its Decision and Direction of Elections and summary judgment fails because of new issue that could not have been previously raised held w/o merit; Bd had found that either Unit A *or* Unit B was appropriate, and therefore affirmative duty placed on Bd by Sec. 9(b) was not violated by allowing Ees to express their desires in elections)

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

2550 ARBITRARY OR ARTIFICIAL GROUPINGS

Trustees of University of Pennsylvania **247 NLRB No. 132**
(E's voluntary recognition of arbitrary grouping of Ees held insufficient justification for exluding similarly classified Ees, thereby splintering Ees who have common community of interest evidenced by centralized hiring procedures, personnel policies, benefits, and labor relations, and by performance of similar duties)

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

2575 LIMITATIONS UPON AUTHORITY IMPOSED BY NLRA

2575-1400 Professional employees

2575-1450 May not be included in unit with nonprofessionals without selfdetermination election (See also 177-2484-9300)

Harborcreek School for Boys **249 NLRB No. 177**

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*designer* at manufacturer and distributor of children's clothing excluded from unit of production and maintenance Ees and ineligible to vote since professional Ee)

2575-2800 Guards

2575-2825 May not be included in unit with other employees

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(individual ineligible to vote since held guard and excluded from unit where he opens up plant before work and closes at end of day, *watches* Ees while in plant, punches and signs time cards where corrections necessary, inspects handbags of Ees leaving plant, and requests unauthorized persons to leave plant)

2575-2850 Union admitting employees other than guards to membership may not represent guards

MDS Courier Service, Inc. (Teamsters Local No. 150) **248 NLRB No. 181**
(U which represented non-guards may not represent drivers who transported packages typically containing documents mortgage papers, engineering specifications and sealed pouches which might contain bank deposits, bearer bonds and jewelry since Ees held guards where employed to protect valuable property of E's customers; notwithstanding not armed, not required to wear uniforms, and deliveries made in privately owned vehicles)

3700 EFFECT OF ACTION BY OTHER AUTHORITIES

3775 FEDERAL AGENCY ACTION

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**
(deferral to rulings by IRS and EEOC that lessee taxicab drivers were independent contractors, unwarranted since Bd's determination was based on record developed after hearing in which parties participated, presented evidence and cross-examined witnesses)

5000 EFFECT OF STIPULATIONS BY PARTIES TO BOARD PROCEEDINGS

5075 STIPULATIONS IN CONSENT AGREEMENT APPROVED BY RD

5075-3300 Stipulations as to scope

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

7500 CRITERIA FOR DETERMINATION OF UNIT SCOPE AND COMPOSITION

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P*

7550 EMPLOYEE COMMUNITY OF INTEREST CONTROLLING

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**
(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules, payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

8700 EFFECT UPON DETERMINATION OF IMMINENT CHANGE IN EMPLOYER'S OPERATION

420 FACTORS RELEVANT TO DETERMINATION OF SCOPE OR COMPOSITION OF UNIT

0100 GENERALLY

0600 PRIOR UNIT DETERMINATION

1200 BARGAINING HISTORY AND PRACTICE

1245 BARGAINING HISTORY OF EMPLOYER'S PREDECESSOR

Saks

1295 VOLUNTARY RECOGNITION

Trustees of University of Pennsylvania **247 NLRB No. 132**

(E's voluntary recognition of arbitrary grouping of Ees held insufficient justification for exluding similarly classified Ees, thereby splintering Ees who have common community of interest evidenced by centralized hiring procedures, personnel policies, benefits, and labor relations, and by performance of similar duties)

1700 REASONS FOR DISREGARD OF BARGAINING HISTORY

2300 CHANGED CIRCUMSTANCES SINCE PRIOR DETERMINATION OR HISTORY

2370 NEW PLANT OR LOCATION

Monongahela Valley Hospital, Inc. **248 NLRB No. 013**

(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

2900 SIMILARITY OF TERMS AND CONDITIONS OF EMPLOYMENT

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees have working conditions different from those of other Ees on ground annotations in Ee handbook reflected both special requirements of CETA and recognition by E of different status of CETA Ees, rejected, where few changes were made in handbook, and those made were minor; no changes were made in key areas of conditions of employment; and extra grievance procedure provided for CETA Ees was never utilized by any CETA Ee)

2903 SIMILAR WAGE RATES

The Folger Coffee Company **250 NLRB No. 001**

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

2906 DIFFERENT WAGE RATES

Century Moving

2912 DIFFERENT MODE OF PAYMENT

Century Moving

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

2915 SIMILAR HOURS OF WORK

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

2921 SIMILAR FRINGE BENEFITS

The Folger Coffee Company **250 NLRB No. 001**

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

2927 UNIFORM WORKING CONDITIONS

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules, payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

The Folger Coffee Company **250 NLRB No. 001**

2933 COMMON SUPERVISION

The Folger Coffee Company **250 NLRB No. 001**

2948 SEPARATE SENIORITY LISTS

Century Moving

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

2993 SIMILAR RELATIONSHIP WITH EMPLOYER

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

2996 DIFFERENT RELATIONSHIP WITH EMPLOYER

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

3400 CHARACTERISTICS OF EMPLOYEES

4000 EMPLOYER'S ADMINISTRATIVE STRUCTURE

4600 EXTENT OF INTEGRATION OF OPERATION

5000 EXTENT OF CONTACT BETWEEN EMPLOYEES

5034 LITTLE OR NO INTERCHANGE OR TRANSFER OF EMPLOYEES

Century Moving

Liquid Transporters, Inc. **250 NLRB No. 163**
(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

5600 FREQUENCY OR REGULARITY OF WORK

6200 DIFFERENCE IN EMPLOYER OR IN LOCATION OF WORK

6260 EMPLOYEES WORK AT DIFFERENT PLANTS OR LOCATIONS

Pickering

Commercial Testing

6700 LEGAL REQUIREMENTS OF OTHER AUTHORITIES

7300 DESIRE OF PARTIES OR OF EMPLOYEES

7303 UNIT SOUGHT BY PETITION

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P*

7312 STIPULATION BY PARTIES

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P*

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

7384 NO UNION SEEKS SEPARATE UNIT

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

7900 ANTICIPATED CHANGES IN WORK CIRCUMSTANCES

8400 AVOIDANCE OF INCONGRUOUS RESULTS

8417 EXCLUSION OF EMPLOYEES WITH SKILLS OR INTERESTS SIMILAR TO THOSE OF EMPLOYEES INCLUDED

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

8429 AVOIDING LEAVING EMPLOYEES WITHOUT REPRESENTATION

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

9000 MULTIEMPLOYER UNIT DETERMINATION FACTORS

9600 MISCELLANEOUS OTHER FACTORS

9620 DECERTIFICATION PETITION

American Recreation Centers, Inc., d/b/a Mel's Bowl (Hotel

9698 CONTROL OVER HIRING

Rosemount Center **248 NLRB No. 163**
(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

440 DETERMINATIONS OF SCOPE OF UNIT

1700 SINGLE LOCATION UNITS

1720 PLANTWIDE UNITS

1720-0100 Generally

1720-0133 Presumptive appropriateness

Penn Color, Inc. **249 NLRB No. 151**

(presumption favoring single-plant unit not rebutted and request for such unit granted, in view of sufficiently autonomous supervision at each of E's two plants, lack of significant Ee interchange, absence of any bargaining history among unit Ees, and fact that no labor organization seeks to represent Ees on broader basis)

1720-3300 Specific unit determinations (by SIC category)

Clinton Corn Processing Company, A Division of Standard Brands, Inc. **251 NLRB No. 133**

(overall unit rather than petitioned-for unit limited to utility Ees at corn milling operation appropriate where corn milling operation was highly integrated production process in which there existed substantial functional and operational integration among Ees who shared communities of interest of such magnitude as to preclude placing utility Ees in separate unit)

Print-O-Stat, Inc. **247 NLRB No. 047**

(unit of all Ees including Ees in purchasing, estimating, repair, and customer service departments, outside salesmen, inventory control clerk, at main plant of E engaged in printing and retail distribution of architectual engineering supplies and office furniture, appropriate, rather than unit limited to production Ees, notwithstanding contention insufficient community of interest, in view of overall common supervision and frequent contacts among departments and job interchangeability)

1720-6700 Placement of employees in plantwide unit (by SIC category)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**

(Ee who during crucial period of contract signing spent 70% of his time in production tasks for E engaged in asphalt road-sealing work included in unit, notwithstanding he was salaried, was present at contract talks (although he did not participate), and later concentrated on sales and estimates rather than production)

Print-O-Stat, Inc. **247 NLRB No. 047**

(unit of all Ees including Ees in purchasing, estimating, repair, and customer service departments, outside salesmen, inventory control clerk, at main plant of E engaged in printing and retail distribution of architectual engineering supplies and office furniture, appropriate, rather than unit limited to production Ees, notwithstanding contention insufficient community of interest, in view of overall common supervision and frequent contacts among departments and job interchangeability)

Great Day, Inc. (Retail Store Employees Union, Local No. 20) **248 NLRB No. 079**

(inclusion of full-time meat department Ees in storewide unit of retail grocery store Ees, rather than separate unit of such Ees, appropriate, where they substantially interchange with other Ees, lack traditional meatcutting skills, are supervised by E's president and store manager as are other Ees, and have same uniform job and wage classifications, benefits and working conditions as other ees)

1740 Plant subdivision units

1740-5000 Departmental units (See 440-1760, for departmental units defined by employee types or category)

1740-5025 Specific determinations (by SIC category)

The Concord Telephone Company **248 NLRB No. 044**

(separate unit of full-time and regular part-time Ees of telephone company's plant department, rather than systemwide unit combining plant department with E's traffic and commercial departments, appropriate, in view of plant department's distinct functional integration and fact that Ee complement of plant department is not so small as to warrant finding only system wide unit appropriate)

1760 EMPLOYEE TYPE OR CATEGORY UNITS

1760-0500 Production employees unit

1760-0560 Placement of production employees in other unit (by SIC category)

Stanley M. Feil, Inc. **250 NLRB No. 065**

(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

1760-0580 Placement of other employee in production unit (by SIC category)

International Business Systems, Inc. **247 NLRB No. 102**

(stockboy who performed duties unrelated to lithographic process on regular basis, included in lithographic unit at E engaged in manufacture of business forms, since he actually functioned as pressroom helper)

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules, payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

1760-1500 Production & maintenance unit employees unit

1760-1580 Placement of other employees in P&M unit (by SIC category)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(office porter at yarn producing facility held office clerical and excluded from unit of P

Avon Products, Inc. **250 NLRB No. 141**

(dock loader, stacker/strapper and scaler/labeler in transportation department included in P

Avon Products, Inc. **250 NLRB No. 141**

(office supply and cash sales clerks in representative service department excluded from P

Avon Products, Inc. **250 NLRB No. 141**

(expediters, master record, container records, and manifest clerks in production control department included in P

Avon Products, Inc. **250 NLRB No. 141**

(all industrial engineering and purchasing department Ees excluded from P

Avon Products, Inc. **250 NLRB No. 141**

(visual order entry (VOE) operators in data processing department and (VOE) terminal operators in merchandise control and material handling departments included in P

Avon Products, Inc. **250 NLRB No. 141**

(line balance clerk, mechanical assembly operator, and merchandise assembly clerk in shipping department included in P

Avon Products, Inc. **250 NLRB No. 141**

(terminal operators, clerk manifest, and warehouse control and receiving control clerks and inventory control analyst in material handling department included in P

Avon Products, Inc. **250 NLRB No. 141**

(all representative service department Ees except department secretary and secretarial, office supply and cash sale clerks included in P

Avon Products, Inc. **250 NLRB No. 141**

(cost accounting, planning, accounts payable, and perpetual inventory clerks in inventory, cost and planning department included in P

Avon Products, Inc. **250 NLRB No. 141**

(all processing department Ees, all packaging department Ees except secretaries and administrative clerks, all quality assurance department Ees except secretaries and chemists, and all engineering department Ees except secretary included in P

Avon Products, Inc. **250 NLRB No. 141**

(secretarial clerk in representative service department, department manager's secretary and administrative clerks in packaging department, and all department secretaries in all departments excluded from P

1760-1580—Cont.

Avon Products, Inc. **250 NLRB No. 141**
(tour hostesses employed only as tour hostesses excluded from P

Avon Products, Inc. **250 NLRB No. 141**
(management shipment coordinator and merchandise expediter in merchandise control department included in P

Avon Products, Inc. **250 NLRB No. 141**
(data processing department Ees and transportation department dispatcher, expediting clerk typist, transportation coordinator and correspondent, and order-service, lost-order, cost-and-tonnage, and transportation clerks included in P

Penn Color, Inc. **249 NLRB No. 151**
(quality control and research and development technicians at plant engaged in production of color concentrates excluded from P

1760-1900 Office clerical employees unit

1760-1960 Placement of office clerical employees in other unit (by SIC category) (See also 440-1760-2400)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*billing clerk* and individual who filed and operated office equipment at manufacturer and distributor of children's clothing held to be ineligible to vote since w/i office-clerical exclusion from warehouse unit notwithstanding they performed some of their duties in warehouse building)

1760-1980 Placement of other employees in office clerical unit (by SIC Category) (See also 440-1760-2800)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(bookkeeper at insurance company excluded from unit since he lacked community of interest with other clericals in view of disparity between his salary and prevailing wage in clerical unit, his flexible working time, and lack of managerial supervision over his daily routines)

1760-2400 Plant clerical employees unit

1760-2460 Placement of plant clericals in other unit (by SIC category) (See also 440-1760-2900)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(Ee found plant clerical not office clerical and included in bargaining unit where her duties are integral part of warehouse operation; 75% of her time spent on record keeping for warehouse Ees, office adjoins warehouse and is separate from office clericals, she goes onto warehouse floor to perform part of her duties, and shares same intermediate supervision, works same hours as warehouse Ees)

1760-3400 Technical employees unit

1760-3420 Identifying characteristics

1760-3420-0100 Generally

The Folger Coffee Company **250 NLRB No. 001**

1760-4000 Office, clerical, and technical employees combined unit

1760-4040 Specific unit determination (by SIC category)

Trustees of Tufts College **251 NLRB No. 108**
(unit of clerical and technical Ees at undergraduate and law campus excluding such Ees at graduate campus appropriate where undergraduate campus is 6 miles from graduate, employment practices and conditions of employment differ, day-to-day management of labor relations is separate, hiring is separate and also hospitalization coverage differs, almost no Ee interchange and no temporary Ee interchange)

1760-4080 Placement of other employees in office/clerical/technical unit (by SIC category)

Trustees of Tufts College **251 NLRB No. 108**
(nurses aide at campus infirmary included in unit where work situs, hours of work and on-the-job contacts with infirmary technicians and clericals provides sufficient community of interest)

Trustees of Tufts College **251 NLRB No. 108**
(vehicle taggers who issue parking tickets but do not perform police duties included in unit especially where excluded from voting with police unit)

Trustees of Tufts College **251 NLRB No. 108**
(former police officer employed as police clerk included in unit where his duties are basically clerical and he does not engage in police work)

1760-5300 Plant Protection and Protective Services Employees Unit

1760-5320 Identifying characteristics

1760-5320-0100 Generally

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(individual ineligible to vote since held guard and excluded from unit where he opens up plant before work and closes at end of day, *watches* Ees while in plant, punches and signs time cards where corrections necessary, inspects handbags of Ees leaving plant, and requests unauthorized persons to leave plant)

1760-5320-2500 Responsibility for protection of customer property

MDS Courier Service, Inc. (Teamsters Local No. 150) **248 NLRB No. 181**
(individuals held guards since they were employed to protect property of E's customers where as couriers they transported important papers, negotiable instruments and other valuables; notwithstanding, they were not armed, not required to wear uniforms and made deliveries in privately owned vehicles)

1760-5320-2800 Responsibility for protection of plant property

Electro-Protective Corporation of Georgia **251 NLRB No. 154**
(service Ees, employed by E which manufacture's, sells, installs and monitors burglar and fire alarm systems and provides its customers with other protective services, held guards and excluded from E's P

1760-5320-4200 Armed, deputized, or uniformed

Electro-Protective Corporation of Georgia **251 NLRB No. 154**
(Ees who wore uniforms and were dispatched to customers premises after alarm set off and required to patrol premises preventing unauthorized entry or egress of property until police and/or customer showed up, held guards because of risk of personal confrontation)

1760-5320-5600 Control of access to, or movement about employer's property

Electro-Protective Corporation of Georgia **251 NLRB No. 154**
(Ees who wore uniforms and were dispatched to customers premises after alarm set off and required to patrol premises preventing unauthorized entry or egress of property until police and/or customer showed up, held guards because of risk of personal confrontation)

1760-5360 Placement of plant protection employees in other unit (by SIC category)

Electro-Protective Corporation of Georgia **251 NLRB No. 154**
(service Ees, employed by E which manufacture's, sells, installs and monitors burglar and fire alarm systems and provides its customers with other protective services, held guards and excluded from E's P

1760-6200 Drivers (including driver-salesmen) unit

1760-6240 Specific determination (by SIC category)

C

Liquid Transporters, Inc. **250 NLRB No. 163**
(permanent sleeper teams who lease their equipment to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as, other drivers for owneroperators who are Ees of E)

1760-6260 Placement of drivers in other unit (by SIC category)

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(overall unit of owner-operators and non-owner operators of equipment leased by owners to E found appropriate)

1760-6280 Placement of other employees in drivers unit (by SIC category)

Cal-Maine Farms, Inc. **249 NLRB No. 133**
(shipping and receiving Ee not included in unit of truckdrivers at E engaged in production, processing, and distribution of shell eggs in view of lack of community of interests where separate supervision, infrequent contact, minimal job interchange, and different wage scales)

C

Liquid Transporters, Inc. **250 NLRB No. 163**
(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

1760-6700 Warehouse Employees Unit

1760-6740 Specific determination (by SIC category)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Sears, Roebuck and Co. **250 NLRB No. 074**
(unit limited to parts department Ees rather than overall unit including repair department Ees of E engaged in receipt, warehousing, distribution,

1760-6740—Cont.

and repair of merchandise, held appropriate, where parts department Ees possess separate and distinct community of interest from Ees in repair department)

1760-6760 Placement of warehouse employees in other unit (by SIC category)

Cal-Maine Farms, Inc. **249 NLRB No. 133**
(shipping and receiving Ee not included in unit of truckdrivers at E engaged in production, processing, and distribution of shell eggs in view of lack of community of interests where separate supervision, infrequent contact, minimal job interchange, and different wage scales)

1760-6780 Placement of other employees in warehouse employees unit (by SIC category)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*billing clerk* and individual who filed and operated office equipment at manufacturer and distributor of children's clothing held to be ineligible to vote since w/i office-clerical exclusion from warehouse unit notwithstanding they performed some of their duties in warehouse building)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(Ees who on occasion performed warehouse work not included in warehouse unit where basically Ees are office clericals)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(warehouse driver not included in warehouse unit since he does not share community of interests where salaried, does not punch time clock, received different medical benefits, and in warehouse for only five hours a week)

1760-7200 **Sales personnel (including driver- salesmen when grouped with sales personnel) unit**

1760-7280 Placement of other employees in sales personnel unit (by SIC category)

Kardon Chevrolet, Inc. **249 NLRB No. 086**
(in decertification proceeding, part-time salesmen excluded from unit of full-time salesmen at auto agency, since parties mutually agreed to modify certified unit to exclude them where, upon original certification, executed contract eliminated any specific reference to part-time Ees; contract specifically prohibited hiring of part-time salesmen and created special status for current part-time salesman, which would not have been necessary if part-time salesmen were included in unit; and E has not hired any part-time salesmen since execution of contract)

1760-7600 **Service employees unit**

1760-7640 Specific determination (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(separate units of electric company's transmission and distribution stores department Ees and customer service department Ees, appropriate)

1760-7660 Placement of service employees in other unit (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

1760-7800 **Service and maintenance employees unit**

1760-7840 Specific determination (by SIC category)

Liquid Transporters, Inc. **250 NLRB No. 163**
(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

N.L.R.B. v. Continental Corporation of Michigan, Inc. d/b/a Holiday Inn West **612 F.2d 257 (C.A. 6)**
(although ct disagreed with wisdom of Bd's approval of small bargaining unit of hotel Ees, ct decided Bd could reasonably have found in its discretion that housekeeping, laundry and maintenance Ees made up proper unit, excluding Ees with different functions and different supervision; ct felt perhaps it would have been better to have single unit of all Ees, but that it was not ct's role to substitute its judgment for that of Bd)

Trustees of University of Pennsylvania **247 NLRB No. 132**
(unit of medical utility men and animal laboratory technicians at medical school of private university held inappropriate since unit is arbitrary grouping of nonprofessional Ees, and unit is inappropriate under Bd precedent concerning bargaining units at colleges and universities; E's voluntary recognition of such arbitrary grouping of Ees held insufficient justification for splintering Ees who have common community of interests)

1760-7900 **Service and warehouse employees unit**

1760-7980 Placement of other employees in service and warehouse unit (by SIC category)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*truckdrivers* of various types and styles of trucks used by two Es comprising single E included in single appropriate unit despite their lack of interchange; lack of interchange was no different than lack of interchange of job functions between Ees in any two job classifications)

1760-9100 **Craft unit**

1760-9133 Identifying characteristics

1760-9133-3400 **Degree of skill possessed**

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

1760-9133-4800 **No need for special training or skill**

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

1760-9900 **Other units defined by employee type or category, or combinations of such**

1760-9940 Specific determination (by SIC category)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Todd Pacific Shipyards Corporation (Driver Sales and Warehousemen, Teamsters Local 117, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousement and Helpers of America, Independent) **250 NLRB No. 138**
(unit of administrative Ees in purchasing and material control departments at shipyard, inappropriate where administrative Ees in all E's departments, rather than just those in purchasing and material control departments, are in constant contact and frequently transferred between departments, receive comparable wages and benefits for similar jobs, and are subject to common facility-wide personnel policy)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(separate units of electric company's transmission and distribution stores department Ees and customer service department Ees, appropriate)

Howard Johnson Company **250 NLRB No. 161**
(E's contention that unit of motel housekeeping Ees was inappropriate because it excluded, among others, front desk clerks, rejected, where case relied on by E is hereby overruled in view of later decisions cited by RD in his D/O directing election which fully supported his determination; *Howard Johnson Co.*, 201 NLRB 376, overruled)

Commercial Testing

Century Moving

1760-9960 Placement of (subject) employees in (other) unit (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

1760-9980 Placement of (other) employees in (subject) unit (by SIC category)

Century Moving

Alumbaugh Coal Corporation **247 NLRB No. 112**
(Ee performing work both as mechanic and laborer at filling station and mine of coal miner included in unit of P

Alumbaugh Coal Corporation **247 NLRB No. 112**
(welder with separate contract terminable at E's will included in unit of P

Dooley Equipment Corporation **JD-215-80**
(skilled part-time welder included in unit of mechanics and parts Ees notwithstanding has full-time employment elsewhere which he come to work

1760-9980—Cont.

when requested, used E's shop and equipment and occasionally worked with E's mechanics under same supervision)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(babysitters and janitors excluded from unit of mechanics, pin chasers, and desk clerks at bowling alley and restaurant, in view of dissimilarity of job skills and functions and lack of contact and exchange of tasks with unit Ees)

Rosemount Center **248 NLRB No. 163**
(CETA Ees at E's child day care facility included in unit of E's regular Ees where substantial similarities in wares, fringe benefits, and working conditions of E's non-CETA and CETA Ees, and Ees' integrated positions in E's staff weigh heavily in affording CETA Ees representation in same unit as E's regular Ees; neither indefinite length of employment of, nor additional benefits available to, CETA Ees preclude finding that they share sufficient community of interest with E's regular Ees)

Rosemount Center **248 NLRB No. 163**
(home mothers employed by child day care facility, who provide day care services in their homes, held to have sufficient community of interest with E's regular Ees to be included in unit since they are integral part of E's operation, perform same infant care work as performed at E's facility, are trained along with other infant care Ees, and are similarly supervised)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility, they do not attend management meetings and are not involved in formulation of goals and policies)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(CETA Ees employed by nonprofit community action agency included in E-wide unit, notwithstanding limited durationof their jobs, in view of their community of interest with other unit Ees and E's attempts to place them elsewhere after their CETA jobs have run out)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(Head Start program teachers and parent coordinators included in community action agency's E-wide unit absent evidence that they are supervisory or managerial, i.e., that they are on parent advisory council or that council controls program's personnel policies)

1780 OTHER EMPLOYEE GROUPINGS

1780-6000 Residual employee units

1780-6050 Appropriateness of residual employees

1780-6050-0100 Generally

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(unit of mechanics, pin chasers and desk clerks excluding janitors and baby sitters at bowling alley and restaurant, appropriate rather than residual unit of all above Ees, in view of lack of sufficient community of interest of babysitters and janitors with mechanic, pin chasers, and desk clerks)

1780-8000 Voting groups

1780-8033 Identifying characteristics

The Folger Coffee Company **250 NLRB No. 001**
(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P

1780-8067 Specific determination (by SIC category)

The Folger Coffee Company **250 NLRB No. 001**
(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P

3300 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

3301 GENERALLY

New England Telephone and Telegraph Company8249 NLRB No. 165
(Bd found instant case distinguishable from cases cited by E in support of contention that RD's decision that less than systemwide unit wasappropriate was contrary to other recent Bd precedent involving E herein)

New England Telephone and Telegraph Company **249 NLRB No. 165**
(Bd found instant case distinguishable from cases cited by E in support of contention that RD's decision that less than systemwide unit was appropriate was contrary to other recent Bd precedent involving E herein)

3350 EMPLOYERWIDE UNITS

3350-2500 Separate firms as single employer

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 12:**
(*truckdrivers* of various types and styles of trucks used by two Es comprising single E included in single appropriate unit despite their lack of interchange; lack of interchange was no different than lack of interchange of job functions between Ees in any two job classifications)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(Ees of E's two companies constituted single appropriate unit, in view of same skills, functions, working conditions and work situs; contention that Bd determination was erroneous as matter of law because Bd failed to consider whether new company's crew was accretion to existing crew, rejected, since issue was appropriateness of unit rather than accretion; contention that Bd must determine whether combined unit was only appropriate unit and, if not, any finding of accretion would be erroneous also rejected)

3350-7500 Specific unit determination (by SIC category)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(E-wide unit of community action agency's Ees appropriate where E has centralized control over determination of terms and conditions of employment of all its Ees)

Pickering

Land Equipment Inc. **248 NLRB No. 098**
(E-wide unit of all E's Ees except office clericals of company renting construction equipment with operators to building contractors and company providing operators, which were found single E herein, appropriate where both companies use same pool of Ees regardless of which is nominal E on two-week job assignments)

3375 LESS THAN EMPLOYERWIDE UNITS

3375-5000 Less than statewide other than metropolitan area

New England Telephone and Telegraph Company **247 NLRB No. 161**
(where segment of E's statewide operation constitutes geographically cohesive unit w/i major administrative division of E's total operation, and manager of devision has authority to discharge Ees, unit sought by U appropriate for bargaining from standpoint of geography and administrative control)

3375-6200 Statewide

3375-6250 Specific determination (by SIC category)

New England Telephone and Telegraph Company8249 NLRB No. 165
(requested unit of telephone utility's two business servicecenters located in New Hampshire held appropriate rather than systemwide unit ofE's 27 business service centers located in five New England states, where in addition to precedent and particular facts relied upon by RD, Bd relied on substantial degree of autonomy in day-to-day operations which local managers at the two centers possess; furthermore, subsequent to request for review herein, Bd has held that less than systemwide unit consisting of residential service center Ees at 12 locations in E's Western Division in Massachusetts was appropriate)

New England Telephone and Telegraph Company **249 NLRB No. 165**
(requested unit of telephone utility's two business service centers located in New Hampshire held appropriate rather than systemwide unit of E's 27 business service centers located in five New England states, where in addition to precedent and particular facts relied upon by RD, Bd relied on substantial degree of autonomy in day-to-day operations which local managers at the two centers possess; furthermore, subsequent to request for review herein, Bd has held that less than systemwide unit consisting of residential service center Ees at 12 locations in E's Western Division in Massachusetts was appropriate)

3375-8700 Less than all locations in two or more states

3375-8750 Specific determination (by SIC category)

Atlanta Baking Company, Inc. **JD-288-80**
(bakery route salesmen at two locations in two states employed by successor E not accretion to successor E's E-wide unit of route salesmen but appropriate separate unit in view of their having sufficient operational separation to retain their separate identity)

5000 MULTIEMPLOYER UNITS (SEE ALSO 530-5700)

5033 IDENTIFYING CHARACTERISTICS

5033-6000 Employers associated in bargaining

The North American Soccer League, etc., et al. v. N.L.R.B. **613 F.2d 1379 (C.A. 5) (1980)**
(leaguewide unit of soccer clubs, appropriate notwithstanding substantial financial autonomy of individual clubs, where club-members of soccer league form, through the league, an integrated group with common labor problems and high degree of centralized control over labor relations)

440-DETERMINATIONS OF SCOPE OF UNIT

6700 ADDITIONS OF GROUPS OF EMPLOYEES TO EXISTING UNITS

6725 SINGLE-LOCATION UNITS

6725-5000 Plant subdivision units

6725-5050 Departmental units

6725-5050-5000 Specific determination

6725-5050-5067 Employees held not to be accretion

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

6750 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

6750-3300 Employerwide units

6750-3350 Specific determination

6750-3350-6700 Employees held not to be accretion

Plumbing Distributors, Inc. (Teamsters, Local Union No. 70) **248 NLRB No. 054**

(notwithstanding ultimate common control and operation of new facility and existing facilities, new facility constituted separate appropriate unit and not accretion to existing facilities, where there was no interchange between Ees, day-to-day supervision was independent from other facilities, and contracts do not explicitly grant recognition to U for new operations established w/i its territorial jurisdiction)

6750-6700 Less than employerwide units

6750-6750 Specific determination

6750-6750-6700 Employees held not to be accretion

Atlanta Baking Company, Inc. **JD-288-80**

(bakery route salesmen at two locations in two states employed by successor E not accretion to successor E's E-wide unit of route salesmen but appropriate separate unit in view of their having sufficient operational separation to retain their separate identity)

Venture Stores, Inc. **JD-81-80**

(E which built distribution center to service both its previously owned and its newly purchased stores held not successor at distribution center to E from which it purchased stores, since purchaser neither employed majority of seller's Ees there on critical date nor was it perfectly clear that it would do so in future; moreover distribution center did not involve same location, plant, equipment, methods, service or customers as seller's distribution facility and its Ees were not accretion to unit of Ees employed at stores which were purchased)

8300 SEVERANCE OF GROUPS OF EMPLOYEES FROM EXISTING UNITS

460 DETERMINATION OF COMPOSITION OF UNIT

2500 DETERMINATIONS INCLUDING OR EXCLUDING EMPLOYEE JOB CATEGORIES FROM UNITS (SEE APPROPRIATE HEADING UNDER TYPE OF UNIT INVOLVED, UNDER 440-0000)

5000 EFFECT OF EMPLOYMENT CATEGORY, STATUS, OR TENURE UPON PLACEMENT IN A UNIT

5033 CATEGORY OR TYPE OF EMPLOYEE

5033-2500 Employees allied with management

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

5033-2550 Nature of relationship

5033-2550-1200 Lessor

Alumbaugh Coal Corporation **247 NLRB No. 112**
(Ee who was also lessor of land being mined for coal to coalmining E held to have interest so aligned with management as to extinguish his community of interest with other Ees)

5033-2550-2500 Member of religious Order

Mercy Hospital of Buffalo **250 NLRB No. 136**
(where E's bylaws require that majority of board of trustees be member of religious order which ran hospital, and administrator also member of Order, member of that order found ineligible to vote as she is considered part of E and is fundamentally different from Ees in bargaining unit)

5033-2550-3300 Child

Pandick Press Midwest, Inc. **251 NLRB No. 058**
(daughter of plant manager who also has title of *president* not eligible to vote in election and excluded from unit where she lives at home with her father, has more flexible shift schedule than other Ees and her easy access to management gives her status and area of interest distinct from other Ees)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(contention that sons, herein excluded from unit, were not employed by their father but by partnership entity owned by father and partner, and that prior Bd decision required GC to prove sons' *special status* for their exclusion, rejected; cited decisions do not relate to issue herein but primarily to Ees of corporations, Congress has definitively excluded child of owner from status of *Ee*, and father herein, sole operator of partnership because of partner's illness, was directly responsible for day-to-day operation of partnership's business)

5033-2550-5000 Husband or wife

Riverside Community Memorial Hospital, Inc. **250 NLRB No. 166**
(registered nurse regularly scheduled on monthly schedule on *on-call* basis, eligible since she met test for Ee-wife of nonowning manager by not enjoying special status where her strictly *on-call* work schedule was not special in view of the number of hours she worked on prearranged and regular basis)

5033-5000 Confidential employees

5033-5001 Generally

Pilgrim Life Insurance Company **249 NLRB No. 140**
(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

5033-5050 Identifying characteristics

5033-5050-5000 Access to information regarding

5033-5050-5020 Labor relations

Pilgrim Life Insurance Company **249 NLRB No. 140**
(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

Reymond Baking co. **249 NLRB No. 156**
(challenge to ballot of *receptionist/typist/floater* sustained since such Ee acts in confidential capacity to person involved in formulating, determining and effectuating E's labor relations and is therefore confidential Ee)

Union College **247 NLRB No. 069**
(secretaries to divisional deans held confidential Ees where they have access to grievance files and E's notes relating to grievances and help with work in connection with labor relations functions of divisional deans)

5033-5050-5060 Personnel records

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(Ee found not to be confidential Ee and included in unit where she was hired as secretary, did general typing and only small amount of personnel work, including voter eligibility list)

5033-7500 Managerial employees

5033-7501 Generally

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

5033-7550 Identifying characteristics

5033-7550-2000 Formulation or effectuation of employer's policies

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility, they do not attend management meetings and are not involved in formulation of goals and policies)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(Head Start program teachers and parent coordinators included in community action agency's E-wide unit absent evidence that they are supervisory or managerial, i.e., that they are on parent advisory council or that council controls program's personnel policies)

Dooley Equipment Corporation **JD-215-80**
(Ee in training period for managerial position with 6 months remaining in period working under close supervision of supervisor with little discretion to determine departmental policy not managerial Ee)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; further, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

5033-7550-4000 Attendance at management meetings

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility, they do not attend management meetings and are not involved in formulation of goals and policies)

5067 STATUS OR TENURE OF EMPLOYEE

5067-0100 Generally

5067-0140 Illegal aliens

Duke City Lumber Company, Inc. (UBC Texas Council of Industrial Workers, UB of C

5067-1400 Apprentices and trainees

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

5067-2800 Employees anticipating change in status or tenure

5067-2850 Criteria relevant to placement

Wright Plastic Products, Inc. **247 NLRB No. 101**
(Ee who had given E notice that he would be quitting to enter Navy in 1 month considered regular full-time Ee notwithstanding he has tendered his resignation)

5067-4200 Regular part-time employees

5067-4201 Generally

Century Moving

5067-4250 Criteria relevant to placement

Dooley Equipment Corporation **JD-215-80**
(skilled part-time welder included in unit of mechanics and parts Ees notwithstanding has full-time employment elsewhere where he came to work when requested, used E's shop and equipment and occasionally worked with E's mechanics under same supervision)

5067-4500 Students

Century Moving

Century Moving

Century Moving

5067-4501 Generally

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-4550 Criteria relevant to placement

Century Moving

5067-7000 Temporary employees

5067-7001 Generally

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-7050 Criteria relevant to placement

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(CETA Ees employed by nonprofit community action agency included in E-wide unit, notwithstanding limited durationof their jobs, in view of their community of interest with other unit Ees and E's attempts to place them elsewhere after their CETA jobs have run out)

Rosemount Center **248 NLRB No. 163**
(CETA Ees employed at E's child day care facility held not temporary Ees; fact that CETA grant might expire and not be renewed does not necessarily make Ees involved under such grant temporary; CETA Ees, like all of E's Ees, are dependent upon exigencies of revenues from Federal, State, and municipal sources which are generally reviewed annually; and even if grant is not refunded, some CETA workers could reasonably expect continued employment because E's contract with prime sponsor required E to make good faith effort to place at least half of CETA Ees in permanent positions)

5067-7700 Intermittent, occasional, or casual employees

5067-7701 Generally

Century Moving

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-7750 Criteria relevant to placement

Dooley Equipment Corporation **JD-215-80**
(skilled part-time welder not included in unit where he only worked 15 hours in quarter preceeding election)

5067-8200 On call employees

Riverside Community Memorial Hospital, Inc. **250 NLRB No. 166**
(registered nurse regularly scheduled on monthly schedule on *on-call* basis who worked approximately 6 hours per week in 14 weeks preceding eligibility date, eligible since she met both test for *on-call* Ees by working average of 4 hours per week in pre-eligibility-period quarter and test for *on-call* registered nurses by working 30 hours in 11-week period)

5067-9900 Other employees

Avon Products, Inc. **250 NLRB No. 141**
(*reserve employees* who have worked 4 or more hours per week in 9 out of 13 weeks preceding issuance of RD decision, eligible)

7500 EMPLOYEE CATEGORIES EXCLUDED FROM UNIT BY STATUTORY DEFINITION (FOR DEFINITIONS, SEE 177-0000)

470 HEALTH CARE INSTITUTION UNITS

0100 GENERALLY (FOR DEFINITIONS OF HEALTH CARE INSTITUTIONS SEE 177-9700-0000-0000)

0150 LEGISLATIVE HISTORY

Newton-Wellesley Hospital **250 NLRB NO. 086**
(in holding separate unit of registered nurses at hospital appropriate, Bd noted legislative history of health care amendments does not require Bd to forego consideration of community of interests among Ees w/i health care industry notwithstanding requirement that Bd give due consideration to avoiding unwarranted fragmation of bargaining units in this industry)

1700 PROFESSIONAL UNITS

1733 REGISTERED NURSES UNIT

1733-0100 Generally

Newton-Wellesley Hospital **250 NLRB NO. 086**
(in holding separate unit of registered nurses at hospital appropriate, Bd noted legislative history of health care amendments does not require Bd to forego consideration of community of interests among Ees w/i health care industry notwithstanding requirement that Bd give due consideration to avoiding unwarranted fragmation of bargaining units in this industry)

1733-4000 Specific determination

Newton-Wellesley Hospital **250 NLRB NO. 086**
(separate unit of registered nurses apart from other professional personnel at hospital, appropriate, in view of community of interest where vast majority of nurses are administratively separated in nursing division as required by state law, subject to common supervision, work in close and continuous contact with one another with limited contact with other professionals, and in view of similar education, training, and experience, and fact most possess same license)

1733-8000 Placement of other employees in registered nurses unit

Albert Einstein Medical Center **248 NLRB No. 009**
(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

1767 UNITS OF OTHER PROFESSIONALS

1767-8000 Placement of other employees in (subject) unit

Mt. Graham Community Hospital **250 NLRB No. 060**
(Manpower Ee under CETA program at hospital included in unit of regular part-time nurses aides, notwithstanding limited duration of her job, where she performed same duties as hospital's regular nurses aides, under same supervision, and her wages and fringe benefits although slightly lower than those received by unit Ees were comparable to wage rate and fringe benefits of unit Ees when differing levels of experience were taken into account)

3300 TECHNICAL EMPLOYEES UNIT

3380 PLACEMENT OF OTHER EMPLOYEES IN TECHNICAL UNIT

Butler Hospital **250 NLRB No. 165**
(mental health workers found technical Ees and included in technical unit at nonprofit hospital providing psychiatric and mental health services where they are mostly college graduates, receive intensive, specialized on-the-job training, consult daily with professional staff, are considered part of nursing staff, and regularly exercise independent judgment)

Albert Einstein Medical Center **248 NLRB No. 009**
(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

5000 SERVICE AND MAINTENANCE EMPLOYEES UNIT

5060 PLACEMENT OF SERVICE AND MAINTENANCE EMPLOYEES IN OTHER UNIT

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(service and maintenance Ees at hospital held not properly encompassed in single unit with plant operations department Ees where service Ees do not possess level or type of skill required of operations Ees, they are separately supervised, work different hours and shifts, some have direct patient contact, they wear different colored uniforms, share no responsibilities with operations Ees, and there was practically no interchange)

5080 PLACEMENT OF OTHER EMPLOYEES IN SERVICE AND AND MAINTENANCE UNIT

Taylor Hospital **249 NLRB No. 031**
(cart technicians, mail messenger and transporters of patients at hospital, classifications which were created after original unit determination, included in unit of hospital Ees since they share community of interest with hospital Ees)

5800 MAINTENANCE EMPLOYEES UNIT

6700 OFFICE CLERICAL UNITS

7500 CRAFT UNITS

8300 OTHER UNITS DEFINED BY TYPE OR CATEGORY OR COMBINATIONS THEREOF

8301 GENERALLY

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(in finding plant operations department Ees at hospital entitled to separate representation from service and maintenance Ees, Bd held ct decisions relied on by E for asserting single unit appropriate did not announce per se rule proscribing certification of unit herein but, rather, required Bd to balance Ees' interest in adequate representation against special consideration of avoiding disruption in health care industry)

Monongahela Valley Hospital, Inc. **248 NLRB No. 013**
(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

8360 PLACEMENT OF (SUBJECT) EMPLOYEES IN OTHER UNIT

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(plant operations department Ees at hospital held entitled to separate representation from service and maintenance Ees in view of the many differences in job classifications between the 2 Ee groups, and operations Ees' wide variety of skills, separate supervision, and distinct uniforms and identification badges)

8380 PLACEMENT OF OTHER EMPLOYEES IN (SUBJECT) UNIT

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(chauffeur-groundskeeper-laborers at hospital included in unit of plant operations department Ees, where responsibilities of all plant operations Ees, in continuing maintenance and improvement of facility, outweigh differences between chauffeur-groundskeeper-laborers and remainder of plant operations Ees and mandates their inclusion in unit)

8800 RESIDUAL EMPLOYEE UNITS

9000 ADDITIONS OF GROUPS OF EMPLOYEES TO EXISTING UNITS

9025 SPECIFIC DETERMINATION

9025-6700 Employees held not to be accretion

United Hospitals, Incorporated and The Children's Hospital, Inc. **249 NLRB No. 063**

(where 3 E members of 21 E multi-E association planned merger and admitting clerks of 2 of these 3 E's were unrepresented by U, U's request that unrepresented Ees be treated as accretion to unit denied because out of 21 Ee groups only 2 were represented by U and Bd will not add unrepresented Ees to multi-E unit on piece meal basis, notwithstanding all admitting clerks would be on 1 payroll, work in single admitting department, perform similar job functions under common supervision)

9100 SEVERANCE OF GROUPS OF EMPLOYEES FROM EXISTING UNITS

480 POSTAL SERVICE UNITS

0100 GENERALLY

3300 SCOPE OF UNITS (SEE 480-6700 FOR PLACEMENT OF PARTICULAR CATEGORIES OF EMPLOYEES IN THESE UNITS)

6700 COMPOSITION OF UNITS

500 UNFAIR LABOR PRACTICES

501 GENERALLY

1400 NATURE AND SCOPE OF PROSCRIPTIONS

1467 ONLY ACTIVITIES SPECIFICALLY PROHIBITED ARE UNFAIR LABOR PRACTICES

1467-6700 Picketing for proscribed purposes only prohibited

Anco Insulations, Inc. **247 NLRB No. 081**
(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

2800 Section 8(c)

2875 CONDUCT PROTECTED BY SECTION 8(c)

2875-4500 Expression of opinion

Billings Chrysler-Plymount, Inc. **251 NLRB No. 089**
(E's statement to Ee that it would be wise to wait until U was certified before he joined not violative as protected statement of opinion)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(supervisor's comments to Ees concerning past experience of being in U and how U didn't help him, that when U was voted in Ees would have to have negotiated contract, not unlawful as mere expressions of opinion and protected by Sec. 8(c) right of free speech)

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**
(sentence in E's letter to Ees which makes it clear that in E's view signing cards is not in the Ees' best interest held campaign propaganda protected by 8(c))

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Signode Corporation **JD-161-80**

Lika Corporation **JD-(SF)-69-80**
(legitimate economic prediction that there could possibly be strike if U came in not violative)

2875-6300 Economic prediction of consequences of unionization

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 150**
(predictions made with reasonable basis in fact and w/o retaliatory motive, lawful)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2875-7000 Prediction of consequences of organization

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

C-F Air Freight, Inc. **247 NLRB No. 060**
(E's statements threatening to close plant, unlawful, where statements conveyed impression that decision to close plant would be made after Ees selected U as representative, E's stated economic reasons as basis of lawful prediction relative to plant closing remarks were spurious, at time statements were made Ees had not even approached U and E was not confronted with contract demands, and continuation of E's facility for over 7 years of financial losses does not support claim that E's statements were merely predictions)

C-F Air Freight, Inc. **247 NLRB No. 060**
(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

2875-7050 In answer to employee's question

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**
(supervisor's statement to Ee that bargaining could lead to strike and possible shutdown of flight kitchen held protected by 8(c))

2875-7700 Threats of reprisal

Thermo King Corporation **247 NLRB No. 048**
(baseball poster, displayed by E during election campaign, bearing slogan *You only get one strike and you are out. And that's the way it is with the Union* held not to constitute threat of discharge, since factual representations that when Ees engage in strike they are not receiving pay, and they are walking or out on picket line, are permitted as expressions of free speech)

2887 CONDUCT NOT PROTECTED BY 8(c)

2887-0800 Announcements of benefits or concessions

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

2887-6600 Predictions as to effect of unionization

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E's statement to Ee, who had previously been threatened with plant closing if U came in, that neighboring plant had closed because of U's demands, and that *maybe U wants more for people and get bankrupt*, unlawful)

4200 EFFECTIVENESS OF UNFAIR LABOR PRACTICE NEED NOT BE SHOWN

4233 ACT 'DOES NOT REQUIRE PROOF THAT)EMPLOYER'S! CONDUCT HAD ITS DESIRED EFFECT'

Service Garage, Inc. **247 NLRB No. 115**
(lawfulness of E's conduct does not turn on whether particular Ee feels that he had been interfered with, restrained or coerced, but on whether E was motivated by U animus)

5600 EMPLOYER'S CONTROL OF BUSINESS PRESERVED

5601 GENERALLY

5601—Cont.

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(while Act does not prevent Es from founding and operating businesses which seek to be *personal-oriented*, or which attempt to apply progressive social principles to their operations, Ees have right to collectively resist application of such principles in order to better their conditions of employment through U representation, and under Act E, despite sincere belief in *human scale* operational philosophy, has duty of forebearance when Ees seek to achieve their ends)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

5601-5000 Unrestricted by Act if no unfair labor practice

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

5614 DISCHARGE POWER FOR NORMAL REASONS UNIMPAIRED

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

5628 DISCONTINUANCE OF OPERATIONS FOR ECONOMIC REASONS PROPER

St. Regis Paper Company **247 NLRB No. 105**
(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

5656 DISCIPLINE: EMPLOYER MAY TAKE ACTION TO MAINTAIN

Clark Equipment Company **250 NLRB No. 178**
(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

United States Postal Service **JD-(SF)-273-79**
(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time*, w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

7000 CIRCUMSTANCES INDICATING VIOLATION

7020 CIRCUMSTANCES SURROUNDING ACTS IN QUESTION MUST BE CONSIDERED

Austell Box Board Corporation **249 NLRB No. 044**
(not only was it proper for Bd, for purposes of making independent evaluation, to look at all facts and circumstances surrounding Ee's discharge to decide whether it was connected with Ee's threat to go to Bd and to examine allegedly legitimate reasons for discharge to determine whether Ee would have been discharged if he had not threatened to go to Bd, but it was Bd's obligation to draw its own inferences from all the evidence to determine presence or absence of discriminatory motivation)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

7060 ANTIUNION ATTITUDE AND POLICIES OF EMPLOYER

7060-3300 Indicia of antiunion attitude

Swift and Company **250 NLRB No. 152**
(supervisor's threat to discharge another Ee along with shifting reasons for discharge and disparate enforcement of rules indicating pretextual reasons for discharge evidence U animus)

7060-8300 Proof of, strengthens proof of unfair labor practice

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

8400 AFFIRMATIVE DEFENSES

8407 ECONOMIC NECESSITY, PRESSURE OR HARDSHIP

St. Regis Paper Company **247 NLRB No. 105**
(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

8414 'CLEAN HANDS' DOCTRINE

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that charging party, E's bargaining representative, was equitably barred in instant 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since *clean hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(inequitable to fault only one of two parties since both contributed to ambiguity of situation, where E's conduct was inconsistent with nonmembership in multi-E association and U continued to accept uncertainty as to E's membership)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(inequitable to fault only one of two parties since both contributed to ambiguity of situation, where E's conduct was inconsistent with nonmembership in multi-E association and U continued to accept uncertainty as to E's membership)

8427 MOTIVE AND INTENT

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(*true purpose* or *real motive* is test for determining whether conduct falls w/i statutory ban; proof of subjective motive can, in limited situations, be made out from conduct itself, but where impact is slight or indirect, or where it may be explained by reference to other lawful considerations, it is prima facie lawful, and an affirmative showing of improper motivation must be made)

8427-0100 Generally

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

Landmark Beef Processors, Inc. **248 NLRB No. 041**
(absence of U animus no less than its presence is relevant factor in assessing motive for discharge)

Permanent Label Corporation **248 NLRB No. 021**
(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

CTS Keene, Inc **247 NLRB No. 141**
(E's intent not material to finding that its interrogation of Ee violated 8(a)(1))

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

8427-2500 Absence of unlawful motive may not be defense

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**

8427-2500—Cont.

(motive or whether coercion succeeded or failed immaterial to prove violation of Sec. 8(a)(1); test is whether E has engaged in conduct which reasonably tends to interfere with free exercise of Ee rights under Act)

8471 DE MINIMUS

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(E's 3-week suspension of salary review w/o consulting with U, unlawful and though inconsequential, it was distinguishable from violations where Bd applied *de minimis* doctrine)

8481 UNION MISCONDUCT, AND FEAR OR THREATS THEREOF

Land Equipment Inc. **248 NLRB No. 098**
(E's contention that it was coerced into signing 8(f) agreement by U's illegal conduct and should therefore not be required to honor said contract, rejected where U's conduct could not be considered because it was outside 10(b) period)

506 EMPLOYEE RIGHTS PROTECTED BY SECTION 7

0100 GENERALLY

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(defense by E, operating legal services as contractor of federal agency, on ground that statute establishing agency forbade Ee conduct for which they were allegedly unlawfully disciplined, rejected; enabling statute is construed to refer to NLRA, to have recognized its provisions, and to have incorporated various interpretations and applications of Sec.7)

0128 RIGHT TO FORM, JOIN, OR ASSIST LABOR ORGANIZATIONS

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(payroll supervisor's response to U steward's request for his paycheck, to effect that *----you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(payroll supervisor's response to U steward's request for his paycheck, to effect that *----you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

0142 RIGHT TO BARGAIN COLLECTIVELY THROUGH REPRESENTATIVE OF OWN CHOOSING

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(while Act does not prevent Es from founding and operating businesses which seek to be *personal-oriented*, or which attempt to apply progressive social principles to their operations, Ees have right to collectively resist application of such principles in order to better their conditions of employment through U representation, and under Act E, despite sincere belief in *human scale* operational philosophy, has duty of forebearance when Ees seek to achieve their ends)

0170 RIGHT TO ENGAGE IN OTHER CONCERTED ACTIIVITIES FOR OTHER MUTUAL AID OR PROTECTION

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB NO. 047**
(Ees are not required to give E notice or obtain its permission to engage in protected activity)

Anco Insulations, Inc. **247 NLRB No. 081**
(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 protects concerted activity by Ees; and one Ee's request for presence of another unit Ee at an interview is *concerted activity*)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

2000 NATURE OF ACTIVITIES PROTECTED

2001 GENERALLY

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(fact that Ees who participate in concerted activities are not members of same U, or Ees of same E, does not alter concerted nature of activity or deprive it of protection accorded such activity by Act)

2001-5000 Concerted activity defined

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company **251 NLRB No. 147**
(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

E. A. Nord Company **250 NLRB No. 068**
(discharge of Ee because of his expressed intent to file contractual grievance unlawful, conduct was concerted since it could establish precedent for other Ees)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(derogatory comments of two Ees concerning management and expression of differences regarding policies and programs, not concerted, notwithstanding Ees together iterated various attitudes, since no effort made during more than 3 months to cultivate dissatisfaction into confrontational form of expression where Ees did not invite other Ees into coalition, formulated no agenda, filed no grievances, nor made any demands)

Sentry Investigation Corp. **249 NLRB No. 130**
(*Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics*)

Colonial Stores Incorporated **248 NLRB No. 142**
(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights,* Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(Ee demanding improvement of wages, pensions, and health benefits held concerted activity rather than effort to obtain objective only for self, since Ee's demands would inure to benefit of all Ees; moreover, Ee had spoken to several of his fellow Ees and apprised them of his intentions and they had not expressed disinterest in his taking action)

Ontario Knife Company **247 NLRB No. 168**
(fact that Ee, who together with another Ee had grievance discussion with supervisor, walked out alone held not to prevent walkout from being protected concerted activity, where grievance in question was group concern of Ees, and Ee and other Ee were engaged in group action up to the point when Ee walked out alone following supervisor's *off-color* remarks made during grievance discussion)

Fall River Savings Bank **247 NLRB No. 088**
(questioning order of seniority in which Ees are called for weekend work found concerted, since seniority is a matter of common concern)

Shuttle Motor Corporation **JD-327-80**
(Ee's inquiry of state agency regarding legality of *back-stubbing* i.e., E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not concerted, where *back-stubbing* was not matter of common C among Ees; further, Ee called agency before any adverse action taken against him and subsequent *back-stubbing against him rectified*)

Public Service Company of New Mexico **JD-(SF)-157-80**

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2001-5000—Cont.

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(Ees' refusals to operate crane for safety reasons held concerted activity rather than individual action, since there was some group action by Ees involved in interest of Ee safety, U was also involved by filing C with OSHA concerning potential danger to all Ees, Ees involved acted as spokesmen for safety of all Ees, and their action was undertaken for mutual aid or protection)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, presence of U representative (at interview) does not have effect on other Ees essential to satisfaction of *Interboro* standard for concerted activity; thus Ee's actions in seeking presence of the representative at that time does not constitute *concerted activity;* but Ee's request for U representation by U which has won challenged election *is protected concerted activity*)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 protects concerted activity by Ees; and one Ee's request for presence of another unit Ee at an interview is *concerted activity*)

2017 NOT ALL CONCERTED ACTIVITIES PROTECTED

Fall River Savings Bank **247 NLRB No. 088**
(protected activity's protection not lost because of Ee's being unpleasant, rude or impolite in course of such activity)

2017-0800 Activity of such character as to render employee unfit for further service

F. W. Woolworth Co. **251 NLRB No. 152**
(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

United States Postal Service **250 NLRB No. 002**
(assuming U steward uttered obscenity toward supervisor in course of formally investigating possible grievance over working conditions on behalf of unit Ee when supervisor failed to ans steward immediately and directly, such utterance was part of *res gestae* of investigation and was not so flagrant or egregious as to remove protection of Act)

2017-1700 Activities tending to disrupt employer's or union's operations

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Anco Insulations, Inc. **247 NLRB No. 081**
(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

2017-3300 Cessation of work for personal reasons

Ontario Knife Company **247 NLRB No. 168**
(Ee's walkout held protected concerted activity, even assuming that supervisor's *off color* remarks were proximate cause of Ee's personal decision to walk out, since supervisor's statements must be considered in context of entire conversation between Ee and supervisor regarding Ee's grievance, which was clearly protected concerted activity, and *off color* remarks particularly emphasized that supervisor was unwilling to consider seriously Ee's complaint)

2017-9000 Resort to prohibited means

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Bechtel Incorporated **248 NLRB No. 158**
(neither Ees' daily repetition of action contrary to supervisor's express instructions and to work rule they had admittedly received was protected where Ees resorted to self-help to impose their chosen terms rather than grieve their work rules dispute, nor was their refusal to sign resulting warning slips which refusal was in support of and inseparable from their prior insubordination)

2017-9100 Conduct in derogation of bargaining representation

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(Ees' demand for premium pay for working on *short* crew and strike in support thereof not unprotected where demand was not in derogation of U's status as bargaining representative and not a demand for unlawful unilateral change by E)

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**
(Ee labor organization's posting on bulletin board of notices seeking to continue its solicitation of Ees' grievances so as to continue negotiating with E over grievances which should have been processed through contractual grievance procedure held unprotected, since posting was in continued derogation of certified U which was Ees' lawful representative)

2033 BOARD HAS FUNCTION OF BALANCING CONFLICTING EMPLOYEE AND EMPLOYER INTERESTS

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill *Weingarten* functions than is another Ee)

3000 REFUSAL TO CROSS PICKET LINE

3067 AT OWN EMPLOYER'S PREMISES

3067-5000 As result of sympathy strike

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

4000 OBJECTIVE AS DETERMINANT OF PROTECTED STATUS OF ACTIVITY

4033 OBJECTIVES WARRANTING PROTECTION OF ACTIVITY

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

4033-0300 Educating fellow employees regarding employment problems

Fun Striders, Inc. **250 NLRB No. 087**
(distribution of literature containing inflamatory political material protected where it also referred to many matters dealing with employment relationship)

Koch Supplies, Inc. **249 NLRB No. 160**
(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and was thus not aimed at solving personal problem but included welfare of others)

4033-0300—Cont.

Special Machine and Engineering, Inc. **247 NLRB No. 077**
(Ee's posting wage and classification scale of another E on union bulletin board at plant where employed held protected concerted activity since material was not, as contented, *want-ad* but, relevant to union business)

4033-0600 Holding union or employee meeting

Church's Fried Chichen, Inc. **JD-(SF)-301-79**

4033-1100 Protesting lawful discharge

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(walk out by Ees in support of discharged Ee, plus picketing outside plant with placards referring to unkept promises by E, to scab labor, and to unfairness to minorities reasonably relates to matters protected by Act; and there was no requirement that Ees had to undertake less drastic forms of protest before walking off their jobs)

4033-1200 Criticizing or protesting actions of supervisor

Pacific Coast International Meat Co. **248 NLRB No. 183**
(Ees complaining about supervisor's continual threats of discharge and favoritism in allocating work, protected)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

4033-1700 Protesting employment practices based on racial and other minority group considerations

Honeywell, Inc. **250 NLRB No. 019**
(Ee's criticism of E's promotion policy as being racially motivated constitutes protected concerted activity)

4033-1800 Protesting employment practices based on sex condiderations

Paul Stuart, Inc. **JD-140-80**

4033-1900 Enforcing a State Employment standard

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

4033-2600 Protesting overtime

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(concerted refusal to work overtime presumptively protected where there was no bargaining relationship, only inchoate relationship with U which did not provide *structured procedures* for conflict resolution)

4033-2800 Protesting deprivation of overtime

Lane Trenching, Inc. **247 NLRB No. 183**
(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

4033-3000 Seeking assistance of union representative at investigatory interview

General Motors Corporation **251 NLRB No. 121**
(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(denying Ee presence of U steward at meeting between E and Ee not violative where sole purpose of meeting was to inform Ee of her discharge as *Weingarten* does not apply to meetings held for such purposes)

Illinois Bell Telephone Company **251 NLRB No. 128**
(Ee entitled to have any Ee present with her at disciplinary meeting with E and E's refusal to allow anyone but Ee with official U status be present, violative)

Texaco, Inc. **251 NLRB No. 063**
(E who required U representative to remain silent during meeting with Ee held solely for purpose of informing him of 3-day suspension did not violate Act as E is not statutorily obligated to furnish representation at such interview and thus fact that representative was required to remain silent irrelevant)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E who insisted that U steward remain silent during investigatory interview violated Act as mere presence of steward while Ee was being interrogated about alleged theft of company property is insufficient to alter inbalance which SCt sought to allevaiate in its *Weingarten* decision)

Kraft Foods, Inc. **251 NLRB No. 006**
(effectively depriving Ee, who was involved in forklift accident and fight with another Ee, of his right to U representation at investigatory interview which Ee reasonably believed might result in disciplinary action unless U representative was present, violative)

Texaco, Inc. **251 NLRB No. 063**
(E who instructed U representative that he must remain silent during interview of Ee relating to his possible misconduct on job violated Act as *Weingarten* right to representation includes not only presence of representative but also active assistance where confrontation threatens Ee's job security)

Amoco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

Roadway Express, Inc. **251 NLRB No. 138**
(supervisor's refusing Ee's request for U representation during interview regarding Ee's suspension for violating E's rule concerning coffee breaks while driving truck held violative, since interview was disciplinary rather than investigative; disciplinary action had to be taken if violation of E's rule had in fact occurred)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **251 NLRB No. 122**
(no violation of Ee's right to have representative at interviews with E concerning Ee's suspension and then discharge for excessive tardiness where purpose of interviews was to announce and implement previously determined disciplinary action; E had decided respectively to suspend and to discharge Ee before meetings, on basis of facts which it had obtained w/o talking to Ee; see *Baton Rouge Water Works* 246 NLRB No. 161 (1979))

United Telephone Company of Florida **251 NLRB No. 101**
(*test for determining whether Ee reasonably believes interview might reasonably result in disciplinary action is measured by objective standards under all circumstances of the case rather than by Ees subjective motivations)*

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**
(*Weingarten* rights attach prior to decision on discipline)

First National Supermarkets, Inc. d/b/a Pick-N-Pay Supermarkets, Inc. **247 NLRB No. 162**
(where Ee did not request U representation at disciplinary meeting no *Weingarten* violation exists; moreover, fact that discipline was justified is not determinative)

Wolverine World Wide, Inc. **JD-185-80**
(Ee's rights were not violated where she was denied presence of Ee representative at interview with E as sole purpose was to inform her that decision had already been made to discharge her; See *Baton Rouge* 246 NLRB No. 161)

Wolverine World Wide, Inc. **JD-185-80**
(discipline and ultimate discharge of Ee for her refusal to leave her work station w/o being accompanied by Ee representative to attend meeting with supervisor which she believed could result in imposition of discipline not violative for Ee has no protected right to refuse to go to office and can be lawfully disciplined for such refusal; See *Roadway Express* 246 NLRB No. 180 overruling *Glomac Plastics* 234 NLRB 1309)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation where personnel manager required Ee to participate in absence-counseling interview w/o U representation, since personnel manager had authority to approve absence and unapproved absence could result in discipline)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill *Weingarten* functions than is another Ee)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(*Weingarten* protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, presence of U representative (at interview) does not have effect on other Ees essential to satisfaction of *Interboro* standard for concerted activity; thus Ee's actions in seeking presence of the representative at that time does not constitute *concerted activity;* but Ee's request for U representation by U which has won challenged election *is protected concerted activity*)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

4033-3000—Cont.

(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

4033-3200 Employee's advising other employees of right to file charges with Board

Hotel

4033-3500 Seeking union membership or representation

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**

4033-4100 Demanding compliance with union contract

Clayton Construction Corporation **250 NLRB No. 121**
(U steward's protests against E's assignment of work to another Ee as contrary to contract, protected)

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Colonial Stores Incorporated **248 NLRB No. 142**
(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights,* Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Colonial Stores Incorporated **248 NLRB No. 142**
(part-time Ee and her non-Ee husband's circulating ptn among Ees during non-working time stating that E was not complying with contract provision requiring it to maintain greatest possible number of full-time job and that, if U failed to make E adhere to agreement, Ees were not getting full representation, held protected concerted activity notwithstanding that Ee was trying to gain more hours of employment for herself; ptn involved matters of obvious concern to Ees and, moreover, other Ees signed the ptn)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

Blaw-Knox Foundry

Redman Construction Company, Inc. **JD-(SF)-105-80**
(discharge of Ee who sought to implement contractual benefits regarding overtime pay violative irrespective of whether asserted claims are found meritorious)

4033-4900 Obtaining wage increase

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company **251 NLRB No. 147**
(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**
(discharge of Ee who acted as spokesman to express dissatisfaction to E about Ees' wages and working conditions, unlawful, where discharge was motivated by *disturbance* created by Ee in registering such dissatisfaction)

AAR Technical Service Center **249 NLRB No. 176**
(letter written by disgruntled Ee who had been denied pay raise he thought he deserved not protected where it contained threats to sabotage E's product)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(Ee demanding improvement of wages, pensions, and health benefits held concerted activity rather than effort to obtain objective only for self, since Ee's demands would inure to benefit of all Ees; moreover, Ee had spoken to several of his fellow Ees and apprised them of his intentions and they had not expressed disinterest in his taking action)

General Warehouse Corp. **247 NLRB No. 142**
(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

Royal Travel Corporation **JD-306-80**

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(Ee's going into E's office together to request increase in salaries and pay for overtime upheld as concerted protected activity; determination thereof need not be premised, as E claimed, on finding of *prior requests or constant complaints by employees culminating in a labor dispute* but may be activity taking place at same time demand is made)

4033-5100 Protesting pay shortages

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(Ee engaged in protected concerted activity when he pressed his claim for travel pay and refused to cooperate with E in its attempt to defend against claims made by Wage and Hour Division of U.S. Department of Labor)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A: J. Librera Disposal Service, Inc. **247 NLRB No. 118**

4033-5300 Protesting change in computing pay (piece rate, etc.)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(refusing to work at reduced piecework rates)

4033-5500 Protesting working conditons

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Anco Insulations, Inc. **247 NLRB No. 081**
(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Bucyrus-Erie Company **247 NLRB No. 059**
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

Blaw-Knox Foundry

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(presenting informal complaints to E relating to wages, hours, and other terms and conditions of employment)

Emblematic Jewellry Products of U.S.A., Inc. **JD-814-79**
(work stoppage to protest cancellation of coffee breaks)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**
(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew of other Ee's involvement and that activity in question was concerted)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

4033-6600 Protesting removal of supervisor

Emblematic Jewellry Products of U.S.A., Inc. **JD-814-79**
(discharge of supervisor)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. **619 F.2d 153 (C.A. 1, 1980)**
(Ees' strike over discharge of supervisor not protected activity where protest was not over actual conditions of employment of Ees; none of Ees who protested gave slightest indication that discharged supervisor's assistance to their unionization efforts motivated their protest)

4033-7600 Seeking removal of supervisor

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct

4033-7600—Cont.

constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

4033-7700 Protesting designation of supervisor

Ford Motor Company **251 NLRB No. 066**
(Ees who file grievances, civil suits, or ULP charges in protest of E's promotional policies to supervisory positions, protected)

4033-9200 Engaging in intraunion activities

Welfare and Pension Funds, Blasters, Drillrunners and Miners Union Local No. 29 and Their Trustees Louis Sanzo, Amadio A. Petito, Paul Crowley, and Theodore King **251 NLRB No. 165**
(Ee of U pension fund involved in protected intra-U activity when he: protested to President of U.S. about loss of U jobs, how members were referred to jobs, sought reelection as secretary-treasurer of U; discharge for such activity violative)

4033-9300 Protesting hiring or job assignment practices

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company **248 NLRB No. 069**
(protesting job assignment outside Ees' work classification, protected)

Master Painting

N.L.R.B. v. Slotkowski Sausage Company **620 F.2d 642 (C.A. 7, 1980)**
(discharge of Ee who chronically complained that he wished to be driver rather than shipping department Ee not violative as Ee was engaged in unprotected unilateral attempt to promote himself; moreover, fact that U represented drivers immaterial because Ee was not employed as driver, never became part of drivers' unit and no U security clause existed so that Ee was not attempting to seek benefits under collective-bargaining agreement)

4067 OBJECTIVES RENDERING ACTIVITIES UNPROTECTED

4067-1000 To obtain objective only for self

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company **251 NLRB No. 147**
(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

Koch Supplies, Inc. **249 NLRB No. 160**
(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and was thus not aimed at solving personal problem but included welfare of others)

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 150**
(Ee's filing of claim with state agency held concerted as well as protected activity even if Ee had acted as individual in so doing; here, however, he had also discussed the matter and gone to state office to file claim with other Ees acting in concert with him to seek *mutual aid* and agency's *protection*; moreover E was aware of concerted nature of Ee's conduct)

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Capitol Ornamental Concrete Specialties, Inc. **248 NLRB No. 109**
(complaining about condition of road in Ee parking lot not concerted activity where no evidence that any other Ees had ever complained or even discussed the matter; thus not matter of common concern)

Anco Insulations, Inc. **247 NLRB No. 081**
(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's writing letter to E's insurance supervisor concerning E's refusal to extend insurance coverage to his new wife w/o seeing marriage certificate and in which he called company officials insulting names, not protected, since letter not attempt to enforce contract right but was simply personal diatribe)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's refusal to comply with company policy that Ees furnish description or map to place to where they live when they gave company post office box as address, not protected, since reason was personal one of not wanting former wife to know where he lived; nor did fact Ee spoke to other Ees about his refusal, implying E wanted information to check up on sick leave make activity concerted where Ee was simply advertising his own defiance)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's refusal to show E marriage license to verify fact of marriage for purpose of insurance coverage for which only spouses and dependents were eligible, not protected, where Ee had first requested coverage for wife prior to marriage and E had no proof of her subsequent eligibility; Ee's refsual was personal rather than concerted, and he was not enforcing contract right)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee of public utility drafting letter to TV station and showing it to other Ees in which he stated that *consumer is being rolled over by utility monopolies*, not protected, since Ee wrote as consumer and stock holder, letter was not directed at improvement in conditions for Ees but was motivated by personal vendetta)

Giuliem Apparel Corp. **JD-162-80**
(Ee's leaving work early because she was too cold held not to constitute protected concerted activity where cold temperature was localized at Ee's work station and was therefore not matter of concern to other Ees that day and there was no evidence that Ee was seeking to advance common interest)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**
(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew of other Ee's involvement and that activity in question was concerted)

N.L.R.B. v. Slotkowski Sausage Company **620 F.2d 642 (C.A. 7, 1980)**
(discharge of Ee who chronically complained that he wished to be driver rather than shipping department Ee not violative as Ee was engaged in unprotected unilateral attempt to promote himself; moreover, fact that U represented drivers immaterial because Ee was not employed as driver, never became part of drivers' unit and no U security clause existed so that Ee was not attempting to seek benefits under collective-bargaining agreement)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

4067-9000 Employee's bad faith, knowledge of falsity, intent to harass, or similar improper motives

AAR Technical Service Center **249 NLRB No. 176**
(letter written by disgruntled Ee who had been denied pay raise he thought he deserved not protected where it contained threats to sabotage E's product)

4067-9500 Disloyalty of employees

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee of public utility drafting letter to TV station and showing it to other Ees in which he stated that *consumer is being rolled over by utility monopolies*, not protected, since Ee wrote as consumer and stock holder, letter was not directed at improvement in conditions for Ees but was motivated by personal vendetta)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining rule which forbids false, vicious or malicious statements about company, its Ees, its products, or methods of manufacture, unlawful, since rule not limited to maliciously false statements but also included merely false statements; further, E may not justify promulgation of broad rule by its need to protect itself from disloyal statements but rather must meet need by rule limited to disloyal statements)

6000 FORMS OF ACTIIVITY

6020 PICKET LINE ACTIVITIES

6020-0100 Generally

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

6020-0100—Cont.

(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

6050 STRIKE ACTIVITY

6050-0100 Generally

6050-0183 Activities constituting participation in strike

Charge Card Association **247 NLRB No. 119**
(Ees who called in sick in protest of their grievances were strikers engaged in protected concerted activity)

6050-1200 What constitutes strike

6050-1240 Spontaneous work stoppage as walkout

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(walk out by Ees in support of discharged Ee, plus picketing outside plant with placards referring to unkept promises by E, to scab labor, and to unfairness to minorities reasonably relates to matters protected by Act; and there was no requirement that Ees had to undertake less drastic forms of protest before walking off their jobs)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(Ee's refusal to work rest of the day after Ees she had walked off job with returned to work held protected, since Ee's decision to do so was integral part of protest about employment conditions at plant, and E, who fired all Ees engaged in walk out, made no distinction in its reaction to Ee's activities when she was acting directly in concert with her fellow Ees and when she departed for remainder of day)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(while Ees violated company rules when they walked off job w/o punching out and w/o notifying their supervisor, their walk out did not lose protection of Act because of violations of those kinds of rules; although existence of those rules could be significant if Ees had engaged in series of short-term walkouts, or even if they had planned to do so, here there was only one walkout and no evidence of any plan to undertake any more)

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company **248 NLRB No. 069**
(departure from plant after refusing to perform assigned duties and effort to see management to complain about assignment held strike)

6050-6200 Effect of no-strike agreements

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

6050-7500 Unprotected strikes

6050-7530 Activity in violation of section 8(g)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(walkout by two nurses aides held not to have lost protection under Sec. 8(g), notwithstanding their failure to give 10 days' notice of intent to strike, since Sec. 8(g) does not apply where labor organization is not involved, and strike here did not involve labor organization, and E and U were not then discussing issue which precipitated strike)

6050-7570 Strike to compel unlawful act

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(Ees' demand for premium pay for working on *short* crew and strike in support thereof not unprotected where demand was not in derogation of U's status as bargaining representative and not a demand for unlawful unilateral change by E)

6050-7580 Strike in violation of no-strike agreement

Owens-Corning Power and Process, a Division of Owens-Corning Fiberglas, Inc. **JD-(SF)-208-80**
(where Ees engaged in economic strike which was initially rendered unprotected by breach of no-strike clause, E's later condonation of strike by reinstatement of strikers and its agreement that *the slate would be wiped clean* estopped it from asserting unlawful nature of strike)

6060 STATEMENTS REGARDING EMPLOYER'S LABOR RELATIONS

6060-5000 Derogatory remark in context of protected activity

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(where unlawfully discharged Ee distributed letter derogatory to E after ALJ issued decision, Ee entitled to reinstatement as letter stated truth about his discharge and repeated his original offer to represent Ees concerning matters of common concern)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(picketing Ees' conversations with newspaper reporter, advising him of placards used in picketing and about E's alleged favoritism and misleading employment advertisements held protected, since Ees do not lose Act's protection merely because they choose to use *channels outside the immediate E-Ee relationship*)

Pioneer Finishing Corporation **247 NLRB No. 182**
(leaflet distributed by Ees to other Ees critical of E's safety conditions, although not accurate representations of fact, constituted concerted protected activity; leaflet's statements were mere *rhetorical hyperbole* and were not intended nor understood as representations of fact)

6060-6700 Truth of statement not proper test

Pioneer Finishing Corporation **247 NLRB No. 182**
(leaflet distributed by Ees to other Ees critical of E's safety conditions, although not accurate representations of fact, constituted concerted protected activity; leaflet's statements were mere *rhetorical hyperbole* and were not intended nor understood as representations of fact)

6070 STATEMENTS REGARDING EMPLOYER'S BUSINESS

6070-5000 Derogatory remark in context of protected activity protected

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(picketing Ees' conversations with newspaper reporter, advising him of placards used in picketing and about E's alleged favoritism and misleading employment advertisements held protected, since Ees do not lose Act's protection merely because they choose to use *channels outside the immediate E-Ee relationship*)

Allied Aviation Service Company of New Jersey, Inc. **248 NLRB No. 026**
(Ee's letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft held concerted protected activity since Ees may properly communicate with third party in order to obtain latter's assistance where communication is related to legitimate ongoing labor dispute between Ees and E, and communication does not constitute disparagement of E's product or reputation)

6070-7500 Good faith in misrepresenting facts relevant

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining rule which forbids false, vicious or malicious statements about company, its Ees, its products, or methods of manufacture, unlawful, since rule not limited to maliciously false statements but also included merely false statements; further, E may not justify promulgation of broad rule by its need to protect itself from disloyal statements but rather must meet need by rule limited to disloyal statements)

6090 OTHER FORMS OF ACTIIVITIES PROTECTED

6090-0500 Distribution of literature

Fun Striders, Inc. **250 NLRB No. 087**
(distribution of literature containing inflamatory political material protected where it also referred to many matters dealing with employment relationship)

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

Texas Instruments Incorporated **247 NLRB No. 037**
(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing --*strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

6090-0600 Holding union or employee meeting

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(vowing to E to meet *outside management's presence* with other Ees to discuss common concerns relating to conditions of employment)

6090-0700 Attempts by employees to change representative's attitude toward particular bargaining subject

Colonial Stores Incorporated **248 NLRB No. 142**
(part-time Ee and her non-Ee husband's circulating ptn among Ees during non-working time stating that E was not complying with contract provision requiring it to maintain greatest possible number of full-time job and that, if U failed to make E adhere to agreement, Ees were not getting full representation, held protected concerted activity notwithstanding that Ee was trying to gain more hours of employment for herself; ptn involved matters of obvious concern to Ees and, moreover, other Ees signed the ptn)

6090-1200 Invocation of terms of collective bargaining agreement

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's refusal to show E marriage license to verify fact of marriage for purpose of insurance coverage for which only spouses and dependents were eligible, not protected, where Ee had first requested coverage for wife prior to marriage and E had no proof of her subsequent eligibility; Ee's refsual was personal rather than concerted, and he was not enforcing contract right)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's writing letter to E's insurance supervisor concerning E's refusal to extend insurance coverage to his new wife w/o seeing marriage certificate and in which he called company officials insulting names, not protected, since letter not attempt to enforce contract right but was simply personal diatribe)

6090-1600 Acting as union steward or officer

Master Painting

6090-2400 Circulation of petition to obtain time off for holiday season

Pyromactics, Inc. **251 NLRB No. 141**
(E's contention that Ee's circulation of ptn for obtaining holiday season time off did not relate to mutual aid and protection of Ees, rejected, in view of use of term *hours* in Sec. 8(d)'s definition of *collective bargaining,* as term used in Sec. 7, as *conferring with respect to wages, hours, and other terms and conditions of employment:* in view thereof, collective request for time off cannot be conceived as not protected under Sec. 7; and leaves of absence have been found bargainable, and thus a term or condition of employment)

6090-3200 Wearing union insignia in plant

The Nestle Company **248 NLRB No. 106**
(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

Pay 'N Save Corporation **247 NLRB No. 184**
(right to wear U buttons is legitimate form of U activity)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(wearing of arm band with U insignia not protected in hospital setting where arm band superimpossed on uniform was highly obtrusive)

6090-3300 Discussion between employees about possibility of joining union in order to secure benefits

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

6090-4200 'Griping' to other employees about working conditions

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(raising matters of mutual concern with other Ees relating to wages, hours, and other terms and conditions of employment)

6090-4900 Invocation of Board processes (see also 8(a)(4))

St. Regis Paper Company **247 NLRB No. 105**
(statements to Ees that filing ULP charges against E could lead to plant closure held violative)

Clark

Clark

6090-5000 Organizing protest regarding working conditions

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(Ee's encouraging other Ees during nonworking time to engage in walkout if Ees were required to work beyond 6 p.m. without being provided a meal held protected concerted activity)

6090-5400 Opposition to union hierarchy

General Truck Drivers, Warehousemen

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(attempts to restrict hiring hall referrals to non-pensioners)

Master Painting

6090-5900 Organizing protest regarding change in working conditions

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

6090-6300 Discussion filing or presentation of grievances

Ford Motor Company **251 NLRB No. 066**
(Ees who file grievances, civil suits, or ULP charges in protest of E's promotional policies to supervisory positions, protected)

Hawthorne Mazda, Inc. **251 NLRB No. 038**
(Ee held engaged in protected concerted activity where he had been instrumental in securing fellow Ees' support in form of ptn for confronting E's management with their concerns regarding, pay, scheduling, and lack of a changing room; in securing meeting at which concerns could be addressed; and in presenting concerns to management in a way that conveyed their group nature, with Ee acting as spokesman for Ees in communicating with management which knew he was acting in that capacity)

United States Postal Service **250 NLRB No. 002**
(assuming U steward uttered obscenity toward supervisor in course of formally investigating possible grievance over working conditions on behalf of unit Ee when supervisor failed to ans steward immediately and directly, such utterance was part of *res gestae* of investigation and was not so flagrant or egregious as to remove protection of Act)

Colonial Stores Incorporated **248 NLRB No. 142**
(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights,* Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Lane Trenching, Inc. **247 NLRB No. 183**
(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

St. Regis Paper Company **247 NLRB No. 105**
(transferring work from one of E's plants to another of E's plants in another city to eliminate overtime, subject of an Ees' grievance, held violative, since grievance was protected activity)

St. Regis Paper Company **247 NLRB No. 105**
(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

6090-6600 Dealing with public agencies regulating working conditions

United Services For The Handicapped **251 NLRB No. 117**
(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

Frank Briscoe Incorporated **247 NLRB No. 006**
(contention that laid-off black Ees who filed EEOC charges engaged in protected concerted activity only with respect to other black Ees in laid-off group because black Ees could only succeed with EEOC at expense of white Ees in group, rejected; action by Ee group to vindicate right against discrimination constitutes protected concerted activity on behalf of all Ees)

Shuttle Motor Corporation **JD-327-80**
(Ee's inquiry of state agency regarding legality of *back-stubbing* i.e., E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not concerted, where *back-stubbing* was not matter of common C among Ees; further, Ee called agency before any adverse action taken against him and subsequent *back-stubbing against him rectified*)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

6090-7000 Prosecution of FLSA claims

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(Ee engaged in protected concerted activity when he pressed his claim for travel pay and refused to cooperate with E in its attempt to defend against claims made by Wage and Hour Division of U.S. Department of Labor)

6090-7700 Prosecution of civil suit

Ford Motor Company **251 NLRB No. 066**
(Ees who file grievances, civil suits, or ULP charges in protest of E's promotional policies to supervisory positions, protected)

6090-8000 Filing, or threatening to file claims with government agencies

United Services For The Handicapped **251 NLRB No. 117**
(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Stafford Construction Co. **250 NLRB No. 128**
(discharge of Ee who threatened to file charges with mine safety agency violative)

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 150**
(Ee's filing of claim with state agency held concerted as well as protected activity even if Ee had acted as individual in so doing; here, however, he had also discussed the matter and gone to state office to file claim with other Ees acting in concert with him to seek *mutual aid* and agency's *protection*; moreover E was aware of concerted nature of Ee's conduct)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

Roadway Express, Inc. **JD-281-80**
(with Department of Transportation; protected)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**
(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew of other Ee's involvement and that activity in question was concerted)

6090-9300 Refusing to perform job assignment

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(refusal of Ees to perform job assignment for safety reasons)

6095 OTHER FORMS OF ACTIVITY UNPROTECTED

6095-6000 Seeking assistance of counsel at investigatory or disciplinary interview

Sentry Investigation Corp. **249 NLRB No. 130**
(Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics)

8000 INDEPENDENT ACTIVITIES OF EMPLOYEES REPRESENTED BY RECOGNIZED UNION

8025 TYPES OF ACTIVITY

8025-5000 Protest not an attempt to engage in direct negotiations

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**
(Ee labor organization's posting on bulletin board of notices seeking to continue its solicitation of Ees' grievances so as to continue negotiating with E over grievances which should have been processed through contractual grievance procedure held unprotected, since posting was in continued derogation of certified U which was Ees' lawful representative)

8067 OBJECTIVES OF ACTIVITIES IN RELATION TO REPRESENTATIVES POSITION

8067-5000 Inconsistent with representatives position

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(Ees' conduct in circulating ptn, addressed to question of what type of insurance coverage Ees should be demanding during contract negotiations, which conduct sought to undermine U's declared bargaining goals regarding insurance coverage, held protected concerted activity)

9000 REFRAINING FROM PROTECTED ACTIVITY

512 EMPLOYER INTERFERENCE WITH EMPLOYEE SECTION 7 RIGHTS (8(a)(1))

0100 GENERALLY

0125 INDIVIDUALS AFFECTED

0125-1400 Former employees

Schlegel Oklahoma, Inc. **250 NLRB No. 012**
(discharged Ee found statutory Ee for purposes of finding threat against him and other Ee unlawful)

0125-1600 Employees of person other than respondent

Monongahela Steel Corporation **JD-392-80**
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

0125-6700 Probationary employees

Bucyrus-Erie Company **247 NLRB No. 059**
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

0125-7500 Supervisors

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(discharge of supervisor solely for that supervisor's own U activities does not contravene...Act)

0125-8700 Relatives of employees

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

0133 ISOLATED ACTS

Brooks Cameras, Inc. **250 NLRB No. 116**
(interrogation which, although addressed to single Ee, concerned all Ees in unit and sought information that could be used to discourage or prevent unionization of these Ees found neither isolated nor minimal)

Byrne Sand

0142 DE MINIMIS VIOLATIONS

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

Brooks Cameras, Inc. **250 NLRB No. 116**
(interrogation which, although addressed to single Ee, concerned all Ees in unit and sought information that could be used to discourage or prevent unionization of these Ees found neither isolated nor minimal)

0150 ACTS OR STATEMENTS NEUTRALIZING COERCIVE EFFECT OF PREJUDICIAL CONDUCT

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

0150-5000 Neutralizing effect not attained

Stanley M. Feil, Inc. **250 NLRB No. 065**
(supervisor asking Ee what she thought of speech in opposition to U by E's president, unlawful, since question necessarily constituted attempt to ascertain Ee's feelings about U and had coercive effect where supervisor had previously interrogated Ee)

0167 ATTITUDE OR MOTIVE OF EMPLOYER

CTS Keene, Inc. **247 NLRB No. 141**
(E's intent not material to finding that its interrogation of Ee violated 8(a)(1))

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(in same way that E, unmotivated by intent to discourage U membership, may make decisions having foreseeable effect of discouraging U membership, so also may U make decisions reasonably calculated to further welfare of all Ees it represents, non-U as well as U, even though foreseeable result of decision may be to encourage U membership)

0167-3300 Neutral attitude

Central Freight Lines, Inc. **250 NLRB No. 063**
(terminal manager's telling leadman not to participate in U activities and to remain neutral)

0167-6700 Antiunion attitude

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

Permanent Label Corporation **248 NLRB No. 021**
(where most of E's anti-U activity occurred after violative discharge of 2 U adherents, this activity can be used to support finding of E's anti-U attitude immediately prior to discharge)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(anti-U animus may be shown by conduct that does not violate Sec. 8(a)(1))

Jack Horton d/b/a Horton Construction Company **JD-797-79**
(layoff motivated by Ees U activity violative, and showing of onimous independent of layoff itself is not essential element in finding discrimination)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

0167-8300 Motive

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(motive or whether coercion succeeded or failed immaterial to prove violation of Sec. 8(a)(1); test is whether E has engaged in conduct which reasonably tends to interfere with free exercise of Ee rights under Act)

Permanent Label Corporation **248 NLRB No. 021**
(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

5000 FORMS OF EMPLOYER CONDUCT

5006 STATEMENTS BY EMPLOYER

5006-1700 Coercive character question of fact for Board

5006-1733 Inherently harmless statements may become coercive as part of course of conduct

St. Francis Hospital **249 NLRB No. 017**
(E's statement that if U won election it would refuse U demands, causing U to strike and Ees to lose jobs would not be violative standing alone but in context of E's other anti-U statements showing inevitability of strike and job loss it is violative)

5006-1733—Cont.

Werth Engineering, Inc. **JD-295-80**
(questioning of Ee by E about his U activities is inherently coercive and fact that supervisor and Ee are personal friends is immaterial)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(in assessing E's activity alleged to constitute unlawful restraint or coercion, relevant inquiry is not limited to examining ostensible meaning or likely impact on Ees of E's statement; scope of inquiry must encompass entire pattern of E conduct)

5006-1767 Must be considered in connection with surrounding circumstances

Marine World USA **251 NLRB No. 161**
(where ct found E's announcements to Ees concerning withholding of wage increase and comments about incumbent U contained no express threat of reprisal or force or promise of benefit and remanded case to Bd for consideration of whether threat of reprisal or force or promise of benefit can be inferred from surrounding circumstances, Bd held that although E's statements were critical of U, threat of reprisal or force or promise of benefit cannot be inferred from the circumstances and concluded, under ct's analysis, announcements were not violative)

The Nestle Company **248 NLRB No. 106**
(foreman's statements to U adherent that Ee's U was *a loser, -- no good and bunch of crooks,* held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

Giuliem Apparel Corp. **JD-162-80**
(E president's statement to Ees that he didn't think U would do Ees any good, that nobody would shove contract down his throat, and that he was only boss, not unlawful, where E president expressed willingness to sign contract with U and his remarks about benefit to Ees of contract reflected expression of opinion about how little benefit this would be to Ees rather than message of futility)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(supervisor's asking Ee shortly before election about U's prospects and *who do you think will win election,* and E president's asking another Ee if he had written letter critical of E officials, violative, in view company hostility toward U that was clearly manifested to Ees)

5006-3300 Coercive effect of statements

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**
(E's statement to Ee that it would be wise to wait until U was certified before he joined not violative as protected statement of opinion)

Marine World USA **251 NLRB No. 161**
(where ct found E's announcements to Ees concerning withholding of wage increase and comments about incumbent U contained no express threat of reprisal or force or promise of benefit and remanded case to Bd for consideration of whether threat of reprisal or force or promise of benefit can be inferred from surrounding circumstances, Bd held that although E's statements were critical of U, threat of reprisal or force or promise of benefit cannot be inferred from the circumstances and concluded, under ct's analysis, announcements were not violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(statement to job inspector that she was lying about U adherent's job production count, that matter was serious and that she had better brush up her story, unlawful, since it restrained inspector in her protected right and obligation to give testimony under Act)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(Ees' subjective response to threat of job loss by E is irrelevant as objective basis is used to determine if E's statement violates Act)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(supervisor's statement to Ees that supervisors would be fired for allowing U to come in, violative)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(foreman's action in throwing U grievance in trash container with comment, *this is what I think of your damn U* unlawful)

The Nestle Company **248 NLRB No. 106**
(foreman's statements to U adherent that Ee's U was *a loser, -- no good and bunch of crooks,* held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

Consumer Enterprises, Inc. **JD-342-80**
(remarks to Spanish-speaking Ees blaming Ees' U activity or their signing of U cards for U.S. Immigration and Naturalization Services raid at E's plant in search of illegal immigrants, violative)

Giuliem Apparel Corp. **JD-162-80**
(E president's statement to Ee that heads would roll if he found out who was behind U, unlawful)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(E's statement to Ee that he knew some of the Ees wanted to be represented by U and that *he was going to go that way any way,* not unlawful, where E's brief statement took place after Ees executed U cards and was not calculated to elicit information or create impression of surveillance)

5006-5000 Kinds of statements

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(supervisor's statement to disciplined Ee that if Ee had kept his mouth shut at disciplinary hearing, discipline would not have been imposed, not unlawful, where supervisor did not initiate conversation but only responded to comment made by Ee, whole exchange totaled only 2 minutes, remark was not made in hostile or vindictive tone, and Ee's conduct at hearing made remark not inappropriate)

5006-5010 Antiunion statements, generally

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's statement to Ee that *maybe all this wouldn't have been happening* if Ees had not tried to get U in, unlawful, since Ee could reasonably interpret statement as reference to his discharge and discharge and discipline of other Ees during U campaign)

Central Freight Lines, Inc. **250 NLRB No. 063**
(terminal manager's telling leadman not to participate in U activities and to remain neutral)

5006-5015 That employer would refuse to bargain with union

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**
(threatening Ee that E would refuse to negotiate with U if it prevailed in decertification election, unlawful)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(statement that E would not give unionized Ees more benefits than unrecognized Ees violative as it showed E had no intention of bargaining with U and would violate Section 8(a)(5))

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

Fotomat Corporation **248 NLRB No. 150**

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Mather Federal Credit Union **JD-(SF)-8-80**
(telling Ees that contract with U would not be signed)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(E's announcement of its intention to go *open shop* simultaneously with its repudiation of obligation to pay contractual benefits held message that E would not recognize and bargain with U, rather than statement, as contended, that E would abide by State *right to work* law)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(E's actions including speech in which E described what happens in negotiations held not threat of sham bargaining)

5006-5020 Attacks upon union or officials, particular forms of

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**
(foreman's remarks to Ee criticizing U steward, violative)

5006-5020-3300 Disparagement generally

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(payroll supervisor's response to U steward's request for his paycheck, to effect that *---you're always in trouble,* not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(payroll supervisor's response to U steward's request for his paycheck, to effect that *---you're always in trouble,* not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(no violation, where in response to Ee's inquiry as to basis for E's statements in support of its decertification ptn E's personnel director informed Ee U was not reputable and asked Ee *why Ees needed U when E gave them benefits anyway* since Ee initiated conversation and question was rhetorical)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor reading to each Ee individually its decertification memo for purpose of disparaging U, unlawful)

5006-5020-6700 Characterization as

5006-5020-6733 Reds, radicals, Communists, fascists, or un-Americans

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E's warning to Ee 2 weeks after U lost election to stay away from *radicals* violative as both understood E to mean U supporters)

5006-5020-6767 Corrupt

The Nestle Company **248 NLRB No. 106**
(foreman's statements to U adherent that Ee's U was *a loser, – no good and bunch of crooks*, held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

5006-5025 Disparagement of employees

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E unlawfully threatened Ee by telling him that Ee was lowdown for not telling E about fellow Ees' U activities and Ee was therefore traitor, costing E money)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(statement by E that U steward was troublemaker and E was having problems in department which could reasonably be interpreted by U officials to mean that E's problem was overzealous steward who filed too many grievances and solution to problem was transfer of steward, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(holding some members of U committee up to ridicule and scorn in front of assembled Ees and referring to them as *jokers and clowns* violative)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(calling suspected U adherent derogatory names prior to election, violative, since action discouraged Ee participation in U activities)

Redman Construction Company, Inc. **JD-(SF)-105-80**
(E's referral to violatively discharged Ee who had attempted to implement terms of contract as *troublemaker, rabble-rouser and/or instigator* in conversation with other Ees violative)

5006-5027 Union supporter should be segregated

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(warning Ees not to associate with U adherents, unlawful)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(telling Ee not to associate with U adherent, unlawful)

5006-5030 Union adherence or other protected activity as employee disaffection or disloyalty toward employer

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

Peavey Company **249 NLRB No. 110**
(E's vice president informing Ee that Ees that started U might be considered disloyal and that disloyal Ees do not move up, unlawful, notwithstanding Ee admitted she thought vice president was speaking of companies in general, where Ee was asked to inform other Ees of vice president's thoughts)

Ahstabula Forge, A Division of ABS Industries, Inc. **JD-388-80**
(industrial relations manager informing Ee that he would not have been hired if E had known he was son of U president, unlawful)

5006-5036 Threatening to report employees to immgration authorities, IRS or other government agencies

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(owner of restaurant informing waitress that he did not like her going to government agency alleging E was violating law by not paying for upkeep of uniforms and reminding her that tax law required that Ees declare all their tips, unlawful, since this conveyed threat to report Ee to IRS if she persisted in protected activity; owner's response to question that he was not demanding she declare all her tips not sufficient to dispel threatening character of remark)

Lika Corporation **JD-(SF)-69-80**
(warning that Mexican nationals would be sent back to Mexico if U came in is implied threat of discharge)

5006-5037 Advising employee on procedure for withdrawal from or decertification of union

Tartan Marine Company **247 NLRB No. 073**
(E's posting notice informing Ees they *had an absolute and moral right to cancel their U cards and have them returned* and that if they desired to get their cards back, they should write letter to U with a copy to Bd asking that their cards be cancelled and returned to them and providing Us and Bd's addresses, not unlawful, where Ees had requested information; however, supervisor calling Ee's attention to notice, after Ee expressd desire to attend company meetings, violative)

5006-5040 Proposal of or statement of preference for inside union

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's request that Ee support incumbent U officials in upcoming U election, made half-year before election, and unaccompanied by any kinds of threats or promises held not to violate 8(a)(2) nor 8(a)(1))

5006-5042 Telling employees they would not be discharged for not joining union despite existence of union-security clause

Regal Shoe Shops #2421

5006-5043 Informing employee that nonunion involvement was reason for not being disciplined

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(E's statement to Ee that she would not have been recalled after her discharge if he had not learned that she did not give another Ee U card, violative)

5006-5044 Informing employee that protected activity was reason for denial of promotion

Coating Products, Inc. **251 NLRB No. 170**

Ford Motor Company **251 NLRB No. 066**
(supervisor's statement to Ees who filed grievances, contemplated civil suits and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

5006-5045 Informing employee that protected activity was reason for discharge or suspension

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(informing Ees that they had been discharged for participation in lawful economic strike, unlawful)

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(E's telling Ees that another Ee was fired because of his U activities, unlawful)

Comgeneral Corporation **251 NLRB No. 069**
(statements to several Ees immediately following mass discharge and layoffs that individuals in question were terminated because they were U adherents violative)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(telling Ees their discharges had been caused by their U activities and U activities of U ringleaders, unlawful)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(informing Ee that coworkers have been discharged for their U activity)

North State Supply Co., Inc. **247 NLRB No. 181**
(E's statement to Ee that another Ee had been discharged for trying to start U, violative as threat that other Ees would be discharged if engaged in U activity)

Earl Kuhns d/b/a Frenchy's K

Production Plated Plastics, Inc. **247 NLRB No. 076**

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(informing strikers that they had lost their status as Ees because their positions had been filled during the strike, unlawful)

5006-5046 Informing employees that wages or benefits could not be increased because of union campaign or objections

Cable Vision, Inc. **249 NLRB No. 062**

Conagra, Inc. **248 NLRB No. 085**

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(informing Ees that E had *discontinued efforts to obtain group health insurances---as a result of commencement of the U organizing campaign* not unlawful where GC failed to prove E had denied Ees any benefits)

Permanent Label Corporation **248 NLRB No. 021**
(E's recitation of *no promises* formula or statement that it was precluded from making commitments, does not cancel inferences that grievances solicited in pre-election context would be corrected)

Service Garage, Inc. **247 NLRB No. 115**
(violation where E made statement that Ees would receive 7 percent pay raise and then later told them they would not receive raise because of Ees' U activities)

Texas Industrial Services **JD-(SF)-180-80**

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**

5006-5046—Cont.

(E informing Ee on advice of counsel he could not give Ee wage increase in view of U activity, not unlawful, since recission was correction of error in offering unlawful increase)

Mather Federal Credit Union **JD-(SF)-8-80**

Southside Electric Cooperative, Inc. **JD-800-79**
(falsely attributing rescission of wage increase to U held violative as effort to undermine U's standing among Ees)

5006-5047 Informing employee or union that protected activity was reason for layoff

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(advising Ee that layoff was to get rid of people organizing for U, unlawful)

East Wind Enterprises **250 NLRB No. 101**

Hall of Mississippi, Inc. **249 NLRB No. 119**
(telling Ees that they were being laid off because of their U activities and implying that E would transfer work from local plant to another plant, violative)

5006-5048 Informing employee that protected activity was reason for less favorable treatment

Pacific Intermountain Express **250 NLRB No. 180**
(violation where E removed customer accounts from Ee and told other Ees that it had done so because of customer's demand that U sales representatives not service them)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(E agent's telling Ees that *they was pissed because of the Union,* violative where the statement was given in response to Ee question as to why E unilaterally changed working hours of Ees)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that he knew E was cutting hours of Ees so they would be unable to support their families, would *have to quit and the union thing would go down the drain,* violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**

5006-5049 Informing employee that protected activity was reason for refusal to hire, reinstate or re-employ

Stafford Construction Co. **250 NLRB No. 128**
(telling prospective Ees that employment was conditioned on withdrawal from U)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(telling applicant he would not be hired because he was honoring U picket line at another retail store held violative)

5006-5050 Misleading or distorted explanation of Act

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Dick Seidler Enterprises, d/b/a Joe

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(telling Ees that if U won election there would be no automatic wage increases or other benefits, but that wages and benefits would be frozen by law while negotiations are going on between E and U, often times for many months, violative)

5006-5053 Futile to join or choose union

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(E's statement that Ees at nonU plant would receive all benefits that Ees at U plant would receive, violative as itindicated that U representation would be futile because it would not result in improvement of working conditions)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(E's statement that Ees at nonU plant would receive all benefits that Ees at U plant would receive, violative as it indicated that U representation would be futile because it would not result in improvement of working conditions)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat made in meeting with U business agent and overheard by Ee to effect that Ees could join U but U would have to work them, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(informing Ee who had been soliciting for U that if U came in company *would buy out committee and she would be hurting,* unlawful threat)

Earl Kuhns d/b/a Frenchy's K

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that E was determined to oppose U and will not bargain for more favorable working conditions, leading Ees to understand that selecting U would be futile, unlawful)

Thermo King Corporation **247 NLRB No. 048**
(preelection speech to Ees in which E stated *you will gain absolutely nothing* by U representation, not unlawful, where speech was compilation of factual material in combination with review of organizing campaign, E outlined benefits already enjoyed by Ees which, if traded for U representation, will only bring Ees anger, misery, and frustration and presented economic problems which could arise if E could not meet U demands, thereby merely engaging in speculation concerning possible consequences beyond E's control)

Giuliem Apparel Corp. **JD-162-80**
(E president's statement to Ees that he didn't think U would do Ees any good, that nobody would shove contract down his throat, and that he was only boss, not unlawful, where E president expressed willingness to sign contract with U and his remarks about benefit to Ees of contract reflected expression of opinion about how little benefit this would be to Ees rather than message of futility)

5006-5055 Employees will have to bargain from scratch if union is selected

Conagra, Inc. **248 NLRB No. 085**

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company,* 208 NLRB 431, 432 (1974))

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

5006-5058 Statements concerning bargaining position

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E informed an Ee that it was determined not to have U in the plant and intended to stall negotiations)

American Telecommunications Corporation, Electromechanical Division)I18249 NLRB No. 149
(statement that E would not give unionized Ees more benefits than unrecognized Ees violative as it showed E had no intentions of bargaining with U and would violate Section 8(a)(5))

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(statement that E would not give unionized Ees more benefits than unrecognized Ees violative as it showed E had no intention of bargaining with U and would violate Section 8(a)(5))

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(misrepresentation of the nature of E-U negotiations by asserting that only issue separating parties was open shop issue, unlawful)

5006-5059 Informing employee that protected activity was reason for denial or offer of employment

Central Transport, Inc. **247 NLRB No. 198**
(E's statements during initial employment interview that E maintained policy of not hiring Ees with history of employment with organized Es, violative)

5006-5060 No benefits from, or need for, union

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(E's statement that Ees at nonU plant would receive all benefits that Ees at U plant would receive, violative as itindicated that U representation would be futile because it would not result in improvement of working conditions)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(E's statement that Ees at nonU plant would receive all benefits that Ees at U plant would receive, violative as it indicated that U representation would be futile because it would not result in improvement of working conditions)

Conagra, Inc. **248 NLRB No. 085**
(statement that E offers same benefits as U *for nothing*, violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(no violation, where in response to Ee's inquiry as to basis for E's statements in support of its decertification ptn E's personnel director informed Ee U was not reputable and asked Ee *why Ees needed U when E gave them benefits anyway* since Ee initiated conversation and question was rhetorical)

Thermo King Corporation **247 NLRB No. 048**
(preelection speech to Ees in which E stated *you will gain absolutely nothing* by U representation, not unlawful, where speech was compilation of factual material in combination with review of organizing campaign, E outlined benefits already enjoyed by Ees which, if traded for U representation, will only bring Ees anger, misery, and frustration and presented economic problems which could arise if E could not meet U demands, thereby merely engaging in speculation concerning possible consequences beyond E's control)

Cashmere Lumber Company **JD-(SF)-93-80**
(although supervisor's conduct would have been unlawful in organizational setting, his asking Ee why he sought to involve official of parent organization in U's problems at plant, accompanied by statements that Ees did not need U as long as he held his management job and that he would *take care of Ees*, not unlawful, notwithstanding supervisor's *take-care-of* statement since, in context of settled bargaining relationship with U, there was nothing in supervisor's remarks or surrounding circumstances from which Ee could have perceived a threat or promise)

5006-5063 Advantages to be gained from not having union

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Keister Coal Company, Inc. **247 NLRB No. 049**
(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

Keister Coal Company, Inc. **247 NLRB No. 049**
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

5006-5065 Detrimental results of unionization

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company **249 NLRB No. 040**
(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off*, held violative)

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew*, held violative)

Permanent Label Corporation **248 NLRB No. 021**
(E's statement that if U came in he was not going to work as hard for the business violative)

Earl Kuhns d/b/a Frenchy's K

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(manager telling Ees that, *if U should get in*, they would be subject to various consequences, causing them to lose (work) hours, held violative)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that he knew E was cutting hours of Ees so they would be unable to support their families, would *have to quit and the union thing would go down the drain*, violative)

Tartan Marine Company **247 NLRB No. 073**
(supervisor showing Ee clipping about discharge of individual for not attending U meetings on Sundays, and informing Ee that Ee and other Ees could be laid off before less capable Ees if U came in, unlawful, absent evidence U advocated seniority over capability)

Keister Coal Company, Inc. **247 NLRB No. 049**
(E's speech to assembly of all his Ees during U campaign that *unionizing this company at this time will create a hardship that will have an effect on all of us* held violative, since it constituted threat of economic adversity in event Ees joined or supported U)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(threatening Ees, that if U came in, U would cause commission of acts of violence, against which E could provide only partial protection, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(asking U supporter how she would feed her children on meager weekly strike benefits should U come into plant, unlawful, since it was part of pattern by management to impress Ees that if U came in a strike detrimental to their interests would inevitably occur)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E in series of letters prior to election informed Ees that if they voted for U they would be *subjected to strikes and tactics that have faced other companies organized by U* leading Ees to believe that their choice was between no U and strike)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E informed Ees in letter prior to election that if Ees selected U as representative E would have to spend time fighting U rather than obtaining orders and remaining competitive in industry, and consequently plant would close, at no point suggesting possibility of collective bargaining)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(E's statement that if U came in *people would be in for a rude awakening and things would get tough around here*, violative)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(violation where E told Ees, in effect, that considerations over working conditions would become *a mechanical thing* if U won election and that E would no longer be able to guarantee Ees 40-hours a week, but only what was available)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(violation where E told Ees that its business was predicated on continuation of service or production and that during contract negotiation E would have no production and hence business would stop)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(supervisor's telling Ee, *In fact, E would go out of business if they had a union*, and if *...the union was voted in, that the mill would have to be shut down about a week to have negotiations*, violative, since remarks imply that E would unilaterally choose to close down its plant during negotiations)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(telling Ees that if U won election their affairs would then be in U's hands and they would no longer have right to speak for themselves in matters pertaining to their employment, violative)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(telling Ees that with U they would no longer have informal atmosphere, that they would lose their freedom, and that decisions affecting their job would be made by others, violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(threat of loss of jobs if U came in, violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(informing Ee that if plant closed when U came in, E would have difficulty in getting another job with non-U E, violative)

5006-5067 Inevitability of strikes upon advent of union

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

Fotomat Corporation **248 NLRB No. 150**

Conagra, Inc. **248 NLRB No. 085**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that strike with its *trouble and tension* is inevitable and will be unsuccessful because of E's resistance to collective bargaining and that, as a result, strikers will suffer hardship and possibly lose thier jobs, unlawful)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E in series of letters prior to election informed Ees that if they voted for U they would be *subjected to strikes and tactics that have faced other companies organized by U* leading Ees to believe that their choice was between no U and strike)

5006-5067—Cont.

Lika Corporation **JD-(SF)-69-80**
(legitimate economic prediction that there could possibly be strike if U came in not violative)

5006-5075 Remove union insignia

Carbonex Coal Company **248 NLRB No. 107**

Permanent Label Corporation **248 NLRB No. 021**

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

5006-5076 Informing employee that his position or catagory did not permit him to participate in union activities

Peavey Company **249 NLRB No. 110**
(E's vice president informing Ee that Ee was confidential Ee and could not participate in U activities, unlawful, notwithstanding contention vice president honestly believed Ee to be confidential Ee as E cannot restrict protected activities of *confidential*)

5006-5080 Expression of opposition to union or collective bargaining

Climate Control Corporation **251 NLRB No. 102**
(threatening to extend negotiations and engage in appeals in order to defeat or delay bargaining with U, violative)

Streamway Division of The Scott

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Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(*put a stop to this U business*)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(statement to Ee that Ees would have to go on strike to get U in at plant, unlawful as threat of reprisal, since statement was not based on objective fact and was obviously injected to raise fears of reprisal)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(statement to Ees that U activity interfered with managerial perogatives, unlawful)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's alleged statement to Ee prior to election that E would decline to enter into contract with U held not unlawful and not interference, where E had stated that, if U won, E would bargain with it because he was not opposed to unionization of plant, but he cautioned that he could not afford U's economic demands which would affect his corporate solvency)

Signode Corporation **JD-161-80**
(posting notice and letters to Ees as to why they should not sign U authorization cards not violative as failing w/i purview of views, argument, or opn; moreover documents contained no threats or promises)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(supervisor's telling Ees a week before election that E president had said that he would not sign contract with U and would *prefer to sell the company before signing any contract*, violative)

5006-5090 Preference for or opposition to one of competing unions or preference for another union

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass — Co. **251 NLRB No. 113**

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Carbonex Coal Company **248 NLRB No. 107**
(E solicitation of Ee to talk to fellow Ees about forming *company U* violative)

5006-5092 Disclosure of card signers' identity to employer

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's speech stating to Ees that E would learn at trial identity of U card signers, unlawful, where it had same impact as earlier speech inhibiting actual card signings themselves and also tended to interfere with Bd processes because it inhibited Ees from testifying freely about their protected activity)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's warning Ees that it might learn identity of card signers in Bd or ct proceeding, coming in midst of U's card signing efforts, unlawful, since statement carried obvious implication that harm or retaliation would result from disclosure of identity of card signers to E)

5006-5095 Inhibiting utilization of grievance machinery

Southern California Gas Company **251 NLRB NO. 127**
(E's speech to Ees that before presenting grievances to U representatives they must go to their supervisors violative)

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not talk to individual Ees but only to shop stewards about grievances, unlawful as threat of more difficult working conditions)

St. Regis Paper Company **247 NLRB No. 105**
(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

Albertson's Inc. **JD-(SF)-104-80**
(no violation, where E opined that Ee should have discussed problem with supervisor before filing grievance in view of long employment relationship and no reprimand or coercion on Ee)

5006-6700 **Method employed in making statement**

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(singling out U adherent who had refused to attend meetings in E's office at which E read other U adherents their rights under E's rules concerning U's campaign, and doing so at Ee's work station instead, unlawful, since difference in locations of occurrence is immaterial and Ee could not avoid substance of E's statements)

5006-6710 Using supervisor's office

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(E's method of singling out identified U supporters from midst of their coworkers to attend series of special, private meetings with management officials in their offices, considered locus of managerial authority, and there to be read their rights under E's rules concerning U's campaign, unlawful)

5006-6720 Using individuals as conduits

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Permanent Label Corporation **248 NLRB No. 021**
(E who asks Ees to tell other Ees to vote against U violates Act)

5006-6733 Addressing assembled employees

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(holding some members of U committee up to ridicule and scorn in front of assembled Ees and referring to them as *jokers and clowns* violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor meeting with Ees as group and explaining why E could not afford dental insurance and discussing E's improved health benefits, unlawful, where meeting was merely extension of unlawful survey E conducted earlier to solicit grievances and undermine U)

Keister Coal Company, Inc. **247 NLRB No. 049**
(E's speech to assembly of all his Ees during U campaign that *unionizing this company at this time will create a hardship that will have an effect on all of us* held violative, since it constituted threat of economic adversity in event Ees joined or supported U)

5006-6767 Pamphlets, circulars, and printed material

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**

5006-6767—Cont.

(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

5006-6783 Conversation among supervisors

Thermo King Corporation **247 NLRB No. 048**
(remark by one supervisor to another, overheard by known active U adherent in production department, that if situation wasn't corrected *all hell was going to break loose,* not unlawful, where Ee mistakenly or otherwise converted remark to his own use by interpreting statement to mean that Ee would catch hell until supervisor found opportunity to discharge him)

5006-8333 Absence of discrimination or threat rebuts coercion

La Habra Dodge, Inc. **251 NLRB No. 001**
(not violative where E's new car sales manager asked Ee who was long time friend of his if he knew anything about U, to which Ee replied *just rumors*)

La Habra Dodge, Inc. **251 NLRB No. 001**
(service manager's statement that his job was fine *until this U thing came up* and asked former Ee *but you don't know anything about that do you,* not unlawful)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(E's misstatement that Ees would be required to join U and pay dues if U won election held interference but not 8(a)(1) violation absent threat to Ee rights)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ee had a U card for him to sign, unlawful, notwithstanding question was asked in joking manner, in view of E's hostility to U)

5006-8367 Noncoercive circumstances

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where Ee freely expressed opposition to U, E's statement to her that if she felt that way she should tell her friends not violative as it contained neither threat nor promise)

5009 CIVIL SUIT OR CRIMINAL COURT ACTION AGAINST EES OR THREATS THEREOF

North State Supply Co., Inc. **247 NLRB No. 181**
(E's threat to countersue Ee who had filed charges with Bd, violative as it was claculated to intimidate Ees in exercise of their right to file charges under Act)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(threat to prosecute Ee for distributing U literature on company premises, unlawful)

5012 COMPANY RULES PROHIBITING OR LIMITING UNION OR OTHER CONCERTED ACTIVITIES

5012-0100 Generally

5012-0133 Balancing of interests required

5012-0133-1100 Exercise of employees' rights under Act on company premises protected, even if that necessitates balancing of interests with property rights of employer

Texas Instruments Incorporated **247 NLRB No. 037**
(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing --*strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

Texas Instruments Incorporated **247 NLRB No. 037**
(prior D/O in instant proceeding affirmed by Bd on remand from ct of appeals; in its supplemental decision, Bd determined issue of validity of application of E's dissemination of classified material rule which adversly affected Ees *Sec. 7 rights* against *business justification for E's rule*)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(threshold question where discharge was pursuant to rule prohibiting dissemination of E's strictly private material (classified wage survey data) is whether rule was prohibited by Act; invalid rule cannot support discharge even if E's only motivation in enforcing rule is not anti-U; only if rule is determined to be valid under Act, would Bd assess motive)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(even where special circumstances exist rebutting presumption of invalidity of facially overbroad no distribution rule, Ees' interest in distributing material must then be balanced against E's interest in controlling such distribution)

5012-0133-1600 Rule may be justified by need to maintain security

Texas Instruments Incorporated **247 NLRB No. 037**
(prior D/O in instant proceeding affirmed by Bd on remand from ct of appeals; in its supplemental decision, Bd determined issue of validity of application of E's dissemination of classified material rule which adversly affected Ees *Sec. 7 rights* against *business justification for E's rule*)

5012-0133-2200 Purpose of employer in establishing and applying rules and prohibitions controlling

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

5012-0133-2275 Application of prohibition not necessary to finding of violation

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(overlybroad no-solicitation rule violative notwithstanding no Ee ever complained about rule)

5012-0133-3300 Lack of reason for rule indicates invalidity

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party. (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

5012-0133-4400 Reasonableness of rule for maintaining order and discipline legalizing factor

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(even where special circumstances exist rebutting presumption of invalidity of facially overbroad no distribution rule, Ees' interest in distributing material must then be balanced against E's interest in controlling such distribution)

5012-0133-5000 Ambiguity in rule construed against promulgator

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

5012-0167 Validity of prohibition presumed where limited to working time

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(E's new rule proscribing distribution and solicitation during working time in plant w/o prior approval of plant manager held lawful despite replacing unlawful overbroad *no-distribution* rule in Ee handbook, since no one paid much attention to old rule and there was no evidence either old or new rule had been selectively applied or enforced; non-U solicitation had been approved but U had never asked permission to solicit)

5012-0175 Per se violation in application of discriminatorily promulgated plant rule

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(written warning issued as enforcement of unlawful no-solicitation rule, unlawful)

5012-1700 Extension of prohibition against union activities to employees' own time on premises

5012-1725 Prohibition of distribution of literature during employees' own time on company premises

5012-1725-0100 Generally

C

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

5012-1725-1100 Plant premises

Central Freight Lines, Inc. **250 NLRB No. 063**

Patsy Bee, Inc. **249 NLRB No. 125**
(requiring E's permission to pass out U literature on company property held impermissibly broad no-distribution rule)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstance of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

5012-1725-1167 Nonworking area

Clinton Inn **249 NLRB No. 022**
(no-solicitation, no-distribution rule held unlawfully broad where it failed to distinguish between working and non-working areas)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(prohibition of Ees' distribution of U literature in plant lobby, a nonworking area, unlawful)

5012-1725-1183 Public Areas

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where E told Ee to stop distributing U literature outside Ee entrance but then apologized and let practice resume it did not violative Act)1725-1700

Working time

Pyromactics, Inc **251 NLRB No. 141**
(maintenance and enforcement of no-solicitation, no distribution rule, unlawful, since it was overly broad in that its *working hours* prescription was presumptively invalid, E presented no evidence to rebut presumption of invalidity, and rule was otherwise invalid under any of the views expressed in Essex International, 211 NLRB 749)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(rule prohibiting distribution of literature or soliciting during working hours, unlawfully broad)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Carlina Knitting Co., Inc., et al. **JD-321-80**
(prohibition of distribution of leaflets prior to working time on E's property, held unlawful)

5012-1725-3300 Roadways

Permanent Label Corporation **248 NLRB No. 021**

5012-1725-5500 Invalidity of rule where not necessary in interest of efficiency, discipline, or security

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstance of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

5012-1725-8800 Invalidity presumed in absence of showing of necessity to maintain production or discipline

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

5012-1737 Prohibiting solicitation during employee's own time on employer's premises

5012-1737-0100 Generally

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(overlybroad no-solicitation rule violative notwithstanding no Ee ever complained about rule)

5012-1737-0183 Presumptively invalid broad rule banning solicitation may be justified by special circumstances

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

5012-1737-2000 Solicitation on plant premises

Central Freight Lines, Inc. **250 NLRB No. 063**

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

Carlina Knitting Co., Inc., et al. **JD-321-80**
(posting sign on factory door stating *no soliciting in the factory*, held unlawful)

Lester Industries, Inc. **JD-97-80**
(violation where E posted and maintained no-solicitation rule which prohibited soliciting U membership and support during non-working time at plant; subsequent posting of lawful change in rule did not remedy lingering effect of longstanding, invalid rule)

Signode Corporation **JD-161-80**
(counselling Ee against passing U card to another Ee on company time unlawful, where both Ees were on nonwork time)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(violation, where E maintained overly broad and improper rule prohibiting U solicitation on the premises)

5012-1737-3300 Working areas

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Permanent Label Corporation **248 NLRB No. 021**
(solicitation process includes distributing U card, signing by Ee and return of card to solicitor, therefore rule banning such activity during nonwork time in work areas is overly broad)

Leeson Electric Corporation **247 NLRB No. 203**
(maintaining rule which prohibited solicitation at any time in work areas, unlawful)

5012-1737-4000 Working time of employees soliciting

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Custom Coating

5012-1737-4000—Cont.

Lyman Steel Company **249 NLRB No. 040**
(two overly broad no-solicitation rules held *prima facie* invalid where E failed to show that it affirmatively communicated to its Ees, or demonstrated by application of rules, that Ees were free to engage in solicitation during breaktime or other periods when they were not actually working)

Colonial Stores Incorporated **248 NLRB No. 142**
(where Ee solicited fellow Ee's signature to ptn during working time on selling flour, E's warning Ee to cease interrupting her fellow Ees' work in process of petitioning, not violative, even though the petitioning activity itself was protected; contrary to GC's contention, E did not thereby unlawfully promulgate overly broad no-solicitation rule)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on my time* where Ee was on own time but Ee she was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(violation where E issued rules of conduct prohibiting solicitation during working hours w/o approval of the facility's administrator)

Lee Simmons and Beverly McKinstry Simmons, a Partnership, d/b/a Elmendorf

Tartan Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks*, violative)

5012-1737-6000 Working time of employees solicited

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Permanent Label Corporation **248 NLRB No. 021**
(E's statement that no solicitation rule covered *company time* violative where it expressly covered break time or lunch time)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on my time* where Ee was on own time but Ee she was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

Tartan Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks*, violative)

5012-1737-6700 Nonworking areas

Baylor University Medical Center **247 NLRB No. 178**
(on remand from Supreme Court for reconsideration in light of its *Beth Israel Hospital* decision, Bd affirmed prior decision that hospital's rule against U solicitation and distribution in vending machine areas violated 8(a)(1), since patients' occasional use of vending machines fell far short of establishing area as one of immediate patient care)

Baylor University Medical Center **247 NLRB No. 178**
(on remand from Supreme Court for reconsideration in light of its *Beth Israel Hospital* decision, Bd affirmed prior decision that hospital's rule against solicitation and distribution in its cafeteria violated 8(a)(1) in view of cafeteria's appropriateness for U solicitation due to impracticality of reaching Ees elsewhere and E's failing to show that total prohibition of U solicitation in cafeteria was necessary or that U solicitation destroyed tranquil atmosphere necessary for patient care or was more upsetting than other conversation)

5012-1737-7300 Public Areas

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on my time* where Ee was on own time but Ee she was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

5012-1750 Rest periods not working time

P. A. Incorporated **248 NLRB No. 077**
(rule prohibiting solicitation during break time, unlawful)

5012-1775 Valid where necessary interest of safety and efficiency

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

5012-2500 Discriminatory promulgation of rule

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(promulgating rule prohibiting U activities on working time while permitting other types of solicitations or activities on working time, unlawful)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(E's new rule proscribing distribution and solicitation during working time in plant w/o prior approval of plant manager held lawful despite replacing unlawful overbroad *no-distribution* rule in Ee handbook, since no one paid much attention to old rule and there was no evidence either old or new rule had been selectively applied or enforced; non-U solicitation had been approved but U had never asked permission to solicit)

5012-3300 Limitation of prohibition to union activities

5012-3317 Nonunion solicitation and distribution permitted

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(violation, where E who maintained broad no-distribution rule allowed charity groups and political candidate to distribute on its premises; while granting permission to charity groups *is fairly innocuous* allowing distribution by political candidate while denying permission to U group E *is making available to its Ees political views it favors while barring political views which it disagrees with*)

5012-3322 Use of bulletin board

Special Machine and Engineering, Inc. **247 NLRB No. 077**
(E's removal from bulletin board for union business of notice containing wage rate at another E's plant, and threatening of Ee with disciplinary action for further occurences, violative, since material conformed to standards of relevances to union business imposed by E)

Werth Engineering, Inc. **JD-295-80**

5012-3367 Limited to prounion activities

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(promulgating rule prohibiting U activities on working time while permitting other types of solicitations or activities on working time, unlawful)

Leeson Electric Corporation **247 NLRB No. 203**
(violation, where E enforced rule prohibiting solicitation at any time in work areas as to U but allowed anti-U Ees to ignore rule, and management agents solicited anti-U attitude not only in working areas, but during working time)

Fluid Packaging Company, Inc. **247 NLRB No. 196**

5012-3367—Cont.

(prohibiting Ees from talking about the U on production line and threatening them with discharge if they do so, unlawful where talk of U was only restriction on conversation)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

Signode Corporation **JD-161-80**
(enforcement of no-solicitation rule selectively and disparately against Ee engaging in U activity, unlawful)

5012-5000 Prohibition against union activities enforced discriminatorily

5012-5017 Employer antiunion campaign not also limited

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's distribution of leaflet about U while Ees were working at their machines, and having Ee read it, held unlawful discriminatorily applied rule in face of overly broad no-solicitation, no-distribution rule applied to U)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E who generally permitted Ees to talk while at work violated Act where on eve of election it prohibited pro-U Ee from talking to other Ees)

5012-5050 Discrimination between unions in permitting activity

Lyman Steel Company **249 NLRB No. 040**
(blanket prohibition against any conversations in plant between Ees who supported disfavored U of E)

5012-6700 Types of employee activities involved

5012-6712 Distribution of union literature

5012-6712-3300 By employees

Central Freight Lines, Inc. **250 NLRB No. 063**

5012-6718 Talking about union activities

Conagra, Inc. **248 NLRB No. 085**
(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat,* unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee with regard to another Ee not to talk U with that Ee, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

Tartan Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks,* violative)

Lee Simmons and Beverly McKinstry Simmons, a Partnership, d/b/a Elmendorf

5012-6735 Prohibition of solicitation and/or distribution of literature during employees' own time on company premises

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

Wolverine World Wide, Inc. **JD-185-80**
(E's rule which prohibited all distributing or soliciting on company property w/o authorization violative as overlybroad; moreover fact that E may not have disciplined any Ees for occasional solicitation for charitable causes does not remove rule from its presumed invalidity)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(no-solicitation rule overly broad where prohibition of solicitation on company premises applied equally to Ees' work time and their personal time)

5012-6737 Dissemination of information as to names, addresses, wages and phone numbers of employees

Conagra, Inc. **248 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

Texas Instruments Incorporated **247 NLRB No. 037**
(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing *--strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(rule prohibiting Ees from discussing E's wage schedule with outsiders, unlawful; E's contention public knowledge of wage rates would assist competitors, rejected, where E in mounting its annual wage survey gave out its own data to competitors)

5012-6738 Distribution of literature pertaining to selection or rejection of U

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(permitting distribution of anti-U pamphlet among Ees during company time, violative, since pamphlet ratified implied threats of closure, loss of jobs and privileges)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(circulating anti-U ptn, violative)

5012-6787 Wearing union insignia

Pay 'N Save Corporation **247 NLRB No. 184**
(E's unwritten rule against wearing of political or controversial buttons, including U buttons, unlawful, where there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

Pay 'N Save Corporation **247 NLRB No. 184**
(E's enforcement of rule against wearing of buttons on store premises, unlawful, where E allowed Ees to wear various kinds of religious as well as other buttons but disparately enforced its button policy against Ees wearing U buttons)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(maintaining and enforcing rule prohibiting any form of solicitation between Ees during working hours, violative; here E prohibited Ee from wearing U button)

5012-6787-3300 May not be prohibited absent special circumstances

Han-Dee Pak, Inc. **249 NLRB No. 107**
(violation where E maintained overly broad rule prohibiting Ees from wearing U buttons and insignia while at work)

5012-6787-6700 May be prohibited if tendency to disrupt production or discipline

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

5012-6787-8300 Disparate treatment in display of insignia

The Nestle Company **248 NLRB No. 106**
(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

5012-8300 Access of nonemployee union agents denied or limited

5012-8320 Distribution of literature or solicitation on company property may be prohibited where employees can reasonably be reached through other channels

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

5012-8340 Must be granted under reasonable regulations where necessary to realization of employees'right

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

5012-8380 Solicitation or distribution in public areas

5012-8380-5000 Health care facilities

N.L.R.B. v. Baylor University Medical Center **439 U.S. 9 (SCt, 1980)**
(ct affirmed ruling that E could prohibit solicitation in hospital corridors, holding that corridors are entitled to same protection accorded other areas devoted essentially to patient care)

5012-8700 Access to plant while off-duty

Werth Engineering, Inc. **JD-295-80**

Cedarwood Care Center **JD-(SF)-315-79**
(E's posting of signs requiring Ees to punch time cards no more than seven minutes before or after their scheduled shift not unlawful limiting of access since for valid reason in view of requirement of Fair Labor Standards Act that Ees be paid for quarter hour as reflected by time cards)

5012-9300 Other rules

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

International Business Systems, Inc. **247 NLRB No. 102**
(violation where after election in lithographic unit E told unit pressmen that there would be no talking among them; there was no persuasive evidence concerning necessity to prohibit pressmen from talking to each other)

5018 PERMISSION TO USE COMPANY TIME AND PREMISES OR FACILITIES

5018-3300 Discriminatory denial of use

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(E hotel's telling Ees, some of whom were supervisors, not to re-enter hotels public-premises, violative, since prohibition was consequence of Ees' having engaged in protected concerted activity, and also since there was no evidence that E had rule forbidding discharged Ees from entering its premises or evidence that discharged Ees who had not exercised Section 7 rights were ever denied entrance to hotel)

5018-6700 Solicitation, collection, circulation, etc., on company time and premises

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

5024 SURVEILLANCE

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(plant superintendent's temporary relocation of his desk to plant area during pendency of election, not unlawful, where superintendent was partially immobilized because of use of crutches due to physical infirmity, as result of relocation he was more accessible to Ees and to work in plant, and he thereby overcame effects of his physical handicap)

5024-2500 Urging employees to inform

W. F. Hall Printing Company **250 NLRB No. 122**
(mtn for summary judgment granted where it is admitted that E sent Ees letter, using language substantially same as that which has recently been found unlawful, requesting them to refuse to sign U authorization cards and also to report to E if any Ee harrassed them about signing U authorization cards)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president asking Ee to interrogate other Ees concerning U activities to ascertain if certain Ee had signed U card and Ee's subsequent interrogation of another Ee, unlawful, since Ee acting as non-supervisory agent of E)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(violation where E's attorney asked Ee, closely allied with management, to obtain information concerning U activities from a discriminatee, and requested information was obtained and reported to E who committed ULPs based, in part, thereon)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(asking Ee to attend U meeting and report back what happened, unlawful)

St. Francis Hospital **249 NLRB No. 017**

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ee to let him know if he heard anything about Ee organizing campaign, violative)

Tartan Marine Company **247 NLRB No. 073**
(E posting notice requesting that Ees notify supervisors if any members of U organizing committee or anyone else attempted to *bother* Ees during working time about U, not unlawful; notwithstanding tone of notice, which also advised Ees against signing authorization cards and warned that members of U organizing committee would be held to full compliance with company rules, was hostile to U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(asking Ee to report to E whether pro-U Ees were pressuring her to sign U card, unlawful)

J. H. Block

5024-3300 Photographing employees

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**

5024-3700 Creating impression of surveillance

Franklin Fouts, d/b/a B

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(asking questions which were couched in terms reasonably calculated to lead Ees to believe that their U activities were already known to E created unlawful impression of surveillance)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(by telling Ee that E had knowledge of U meeting through his *connections*)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(statement, prior to unlawfully searching Ee's locker for U documents, that search was prompted by observation of another Ee reading a U paper conveyed unlawful impression of surveillance)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(E telling Ee that E had list of and knew who signed U cards, violative)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling Ee that E would know how Ees voted in election, violative)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(no violation, where during U campaign E searched Ees' purses and bags as Ees left its garment warehouse; contention search was to ascertain presence of U literature, rejected, since E had legitimate need for searches in order to minimize theft from warehouse and in view of previously existing rule stating bags were subject to search and there had been checks in past)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(by conspicuously surveilling passing out of U leaflets)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(by stating to Ees at meetings that E would know who among its Ees had signed U cards)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(statement that E knew Ee was going to U meetings because her car was seen at U meeting places, and E's statement that E had heard Ee had signed U card)

Central Freight Lines, Inc. **250 NLRB No. 063**
(terminal manager's telling hospitalized driver, when discussing U, that *I have ways of finding out things*)

Central Freight Lines, Inc. **250 NLRB No. 063**
(terminal manager's telling Ee, truckdriver, that his truck had been observed at U meeting)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created where supervisor informed Ee that E's president knew she had signed U card)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president's attempt to create impression of surveillance by informing Ee that E was already aware of who U sympathizers were and specifically naming Ees, unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created where supervisor informed Ee that an Ee had already admitted signing U card and that another Ee knew something about U but was not saying anything)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president informing Ee that Ee was on his list of suspected U sympathizers and asserting he would not let any young girls take over and run his business, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created by E's president informing Ees during their termination interview that someone told him they had been soliciting U cards, unlawful)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

5024-3700—Cont.

(violation and interference where E responded to inquiry about how E knew what was said at U meeting that E had people there who gave E information, thus giving impression of surveillance)

Patsy Bee, Inc. **249 NLRB No. 125**

Sentry Investigation Corp. **249 NLRB No. 130**
(impression created by E's president accusing Ees of being instigators and ring leaders of campaign to change bargaining representative to U not desired by E)

Hedison Manufacturing Company **249 NLRB No. 096**
(no impression of surveillance created by supervisor's statement to Ees that he knew they were engaged in U activities where Ees were open in their support of U and E was well aware of their U adherence)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(telling Ees that E knew all Ees who had signed U authorization cards)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(morning after U's election of officers E stated *I know what is going on around here-----*)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E president's statement to Ee that he had heard Ee was organizing U drive did not create impression of surveillance where Ee had previously complained to E president that other Ees were blaming her for starting U activity)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(impression created by statement to effect that E knew Ee was not involved with U)

Lyman Steel Company **249 NLRB No. 040**
(telling Ees that E *knew how everyone voted*)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(impression created where supervisor informed Ee that he understood there was to be U meeting that night)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(supervisor's telling Ee, *your buddy from the Union says hello,* violative, where the buddy referred to was individual who had made initial U contact)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(supervisor's statements that he knew Ee had signed Ees' complaint letter which was sent to E's president, not violative, in view of possibility that statements were made after copy of the letter was received from president's office)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee that he thought he would attend U meeting, and when reminded he could not vote replying *Well, I could come and take names,* unlawful, notwithstanding contention supervisor joking and no Ee could take as serious threat; further, E's agents had previously committed numerous violations including supervisor involved)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(statement that head waiter knew of U meeting although he was not present at such meeting held violative)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(response to inquiry from Ee about how he knew about U, supervisor's reply of *I just know* implied that E's knowledge of U activity gained through surveillance)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(E's statement that he had a list of yes votes and no votes created impression of surveillance and interfered with election)

Wolverine Worldwide, Inc. **247 NLRB No. 137**
(plant manager created impression of surveillance by driving by U sponsored picnic; although incident isolated found violative in context of other ULPs)

Tartan Marine Company **247 NLRB No. 073**
(impression not created by supervisor asking Ee if Ee knew of U meeting, who was there, who was trying to get people together, and where meeting was held, since supervisor informed Ee where and from whom he had heard about Ee and U)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(statements directed at Ees that E knew who among its Ees supported U, violative since such statements created impression of surveillance)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(advising Ee that E knew who was at meeting and the like, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(E's statement regarding Ee's influence with other Ees did not create impression of surveillance where Ee could not have reasonably assumed from statement that his U activities were under surveillance, since Ee's pro-U sympathies were matter of common knowledge and Ee was aware that his views were known to others)

Galax Apparel Corporation **247 NLRB No. 026**

Checker, Inc., d/b/a Checker Cab Company **247 NLRB No. 019**
(impression not created where supervisor informed Ees he had list of Ees supporting U since there was no indication list had been obtained by surveillance and Ees could not reasonably assume acquired by surviellance where supervisor identified source of list as pro-U Ee)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(supervisor warning Ee that she was going to tell him about U and that he knew about her U activity, created impression of surveillance)

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's informing U adherents of E's knowledge of U meeting and distribution of authorization cards created unlawful impression of surveillance)

Giuliem Apparel Corp. **JD-162-80**
(statement that E had list of troublemakers in context of conversation about U created impression of surveillance)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(informing Ee that tabulation was being kept of Ees as to whether they were for or against U)

5024-3900 Surveillance of union organizers

Lippincott Industries, Inc. **251 NLRB No. 034**
(no unlawful surveillance of Ees' U activities where 2 supervisors observed U organizers participating in circulating and signing U authorization cards in company parking lot)

5024-4100 Surveillance of union handbilling or picketing

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although supervisor's conduct in observing pro-U Ees while they were distributing handbills on E's premises was not in itself unlawful, his conduct in writing what appeared to be their names on a pad was unlawful, since conduct created in Ees' minds impression that their names were being noted for future discrimination)

5024-4133 Photographing

Excavation-Construction, Inc. **248 NLRB No. 081**
(photographing of picketing Ees not violative where violence was occurring on picket line and E had reason to believe that U was engaging in impermissible strike conduct)

5024-4167 Observation by supervisors

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(actions of supervisor who barged into Ees' U meeting at hotel, demanded to know what had been discussed and provoked fight violative, notwithstanding E demoted supervisor and assigned him to remote area as this action was not enough to effectively repudiate supervisor's unlawful conduct)

5024-5400 Surveillance of employees at work

Providence Hospital **251 NLRB No. 148**
(following U adherent while he performed his duties constituted unlawful surveillance where E's reason for conduct was not substantiated and E had previously solicited another Ee (outside Sec. 10(b) period) to report on Ees who attended U meetings and on their U activities)

Lyman Steel Company **249 NLRB No. 040**
(vice-president instructed by E *to contain (U adherent) to his welding department*)

Tartan Marine Company **247 NLRB No. 073**
(where entire work force visible to supervisors, no unlawful surveillance, absent evidence E watching Ees more closely during U campaign)

5024-5800 Supervisors instructed to observe and report union activity or membership

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(directing supervisors to observe and report on Ees' U activities, not unlawful)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

5024-6000 Attendance at union meeting

Stafford Construction Co. **250 NLRB No. 128**
(statement that E would have observer at U meeting violative)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(actions of supervisor who barged into Ees' U meeting at hotel, demanded to know what had been discussed and provoked fight violative, notwithstanding E demoted supervisor and assigned him to remote area as this action was not enough to effectively repudiate supervisor's unlawful conduct)

5024-6600 Observation or ascertainment of employees' meeting or place of meetings

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(surveillance of U meetings of night shift Ees by night shift foreman, unlawful)

Stafford Construction Co. **250 NLRB No. 128**
(statement that E would have observer at U meeting violative)

Patsy Bee, Inc. **249 NLRB No. 125**

Custom Coating

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation where, soon after interrogating Ees as to whether scheduled informal gathering of Ees was in fact U meeting, supervisor momentarily visited local bar where the informal gathering was taking place)

Retailer's Coupon Redemption Co., Inc. **JD-194-80**
(violation where E's president and her family members, accompanied by certain supervisors, positioned themselves outside Ees' U organizational meeting room, where they were clearly able to note identities of Ees attending, who had to file past the president to enter the meeting room)

5024-6700 Observation or ascertainment of solicitation away from Employer's premises

United Services For The Handicapped **251 NLRB No. 117**
(supervisor going to client to verify report that striking Ees were soliciting nonstriking Ees at client's premises, and to determine which strikers engaged in solicitation, violative)

5024-7100 Observation of employees meeting with union representatives

Woodland Molded Plastics Corp. **250 NLRB No. 020**
(setting aside of election warranted where E's treasurer observed for 10-15 minutes activities between U organizers and Ees taking place on public property; notwithstanding his initial presence was for lawful purpose of keeping U organizers off E's property in response to reports U organizers on company property)

5030 INTERROGATION CONCERNING UNION ATTITUDE, MEMBERSHIP, OR ACTIVITIES (See also 512- 5048)

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

5030-0100 Generally

5030-0125 Coercive circumstances

Weyerhaeuser Company **251 NLRB No. 097**
(questioning Ee about wearing U button and *if it was going to feed him,* violative)

Lippincott Industries, Inc. **251 NLRB No. 034**
(interrogation of 2 Ees, unlawful, since probing of views on Us, even addressed to Ees who have openly declared their prounion sympathies, is coercive)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E at meeting he called after being notified U had claimed majority asking Ees how many of them had signed up with U, unlawful, in context of extreme animus displayed by E at meeting, notwithstanding Ees did not answer)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present at subsequent interview with E's president)

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to Ee wearing U button that his U activities would have negative effect on his chances for job reassignment constitute threat but not interrogation as to his U sympathies)

Boyle-Midway, Inc., Division of American Home Products Corp. **247 NLRB No. 124**
(systematic interrogation about U with individual Ees in locus of authority, violative, where purpose of questioning was not revealed and no assurance against reprisals were made)

McLean Trucking Company **JD-368-80**
(manager's calling Ee into his office and privately questioning her because he had learned that Ees had signed U cards, violative where there was no evidence of any assurances against reprisals; in addition, private conference conducted in manager's office tended to contribute to coercive atmosphere)

Byrne Sand

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(questioning Ee about U's organizing effort by low level supervisor violative where E's higher-level management had clearly indicated their anti-U feelings and had discharged supervisor who had become involved in U activity)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(no violation, where no evidence E authorized remarks of *low level supervisor;* further, where *low level supervisor* had voted in election and Ees knew that his anti-U bias was personal Ees did not have just cause to believe he had made threatening remarks on behalf of management)

5030-0150 Coercive in light of other unfair labor practice

Lika Corporation **JD-(SF)-69-80**
(interrogation concerning U sympathies violative notwithstanding accompanied by assurances against reprisal where also accompanied by offer of benefit)

5030-0175 Not coercive per se

Sweetheart Cup of Texas **251 NLRB No. 057**
(supervisor's asking Ee single question of how he liked film on Teamsters U that E had shown at Ee meeting, not coercive)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(supervisor's engaging in interrogation w/o giving Ees assurance against reprisals, unlawful)

Southwestern Bell Telephone Company **JD-(SF)-304-79**
(E's inquiries regarding possible violations of valid rule restricting access of U representatives to Ees who are working can be interpreted as involving an effort by E to ascertain facts to aid investigation into unauthorized visits of non-Ees; although U activity may have been the conduct that generated violations of valid plant rules, E will not be precluded from questioning Ees about violations of such rules or be barred from reminding Ees that they are not to engage in activity in disregard of rules)

5030-2000 Questioning of applicants for employment

5030-2050 Questioning applicants as to their union membership, adherence, or activities

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

Lyman Steel Company **249 NLRB No. 040**

Nice-Pak Products, Inc. **248 NLRB No. 173**

Vantage Petroleum Corp. **247 NLRB No. 202**
(E's inquiry as to whether individuals were interested in employment w/o U representation, not violative, where inquiry merely sought to see whether the individuals were interested in employment at E's stated terms and conditions or were insisting upon package deal)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(violation, where applicant was informed Ees had elected to go U, that there might be strike, and asked whether she would cross picket line)

N.L.R.B. v. Slotkowski Sausage Company **620 F.2d 642 (C.A. 7, 1980)**
(in plant where 2 Us have outstanding contracts it is not illegal to ask applicant in pre-employment interview whether he belongs to U and if so which one)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(where employment agency used application forms containing questions about applicant's U activities, E violated Act when it took no action to alleviate impression these forms made on applicants)

5030-4000 Questioning of employees

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(violation where E asked Ee if he felt guilty for having caused E to discharge fellow Ee for engaging in U activities, which was followed by unlawful discharge of Ee when he disclaimed any guilt feelings)

5030-4020 Concerning own union membership adherence or activities

Weyerhaeuser Company **251 NLRB No. 097**
(questioning Ee why he wanted U, violative)

Weyerhaeuser Company **251 NLRB No. 097**
(simple inquiry as to whether or not Ee had made up his mind about how he was going to vote in upcoming election, w/o more, not unlawful)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by interrogation of Ee about her signing U card by nonsupervisory Ee whom Ees could reasonably believe to be speaking for management)

Lippincott Industries, Inc. **251 NLRB No. 034**
(interrogation of 2 Ees, unlawful, since probing of views on Us, even addressed to Ees who have openly declared their prounion sympathies, is coercive)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(coercively polling Ees concerning their U sympathies and activities, unlawful)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(asking Ee why he joined U, unlawful)

General Thermo, Inc. **250 NLRB No. 158**
(assistant plant manager's interrogation of Ee as to his U activities, unlawful, notwithstanding social nature of occasion in which interrogation took place)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(supervisor asking Ee what she thought of speech in opposition to U by E's president, unlawful, since question necessarily constituted attempt to ascertain Ee's feelings about U and had coercive effect where supervisor had previously interrogated Ee)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor instructing Ee to admit to E's president that she had signed U card and was conversant with U's organizing efforts, unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president asking Ee to interrogate other Ees concerning U activities to ascertain if certain Ee had signed U card and Ee's subsequent interrogation of another Ee, unlawful, since Ee acting as non-supervisory agent of E)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(request for Ees' *vote of confidence* at Ee meeting violative, since such vote could be expected to reveal dissatisfied Ees who would be most likely to support U organizational efforts)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present at subsequent interview with E's president)

Han-Dee Pak, Inc. **249 NLRB No. 107**

Smedberg Machine

Levingston Shipbuilding Company **249 NLRB No. 001**
(investigatory interrogation of alleged threat of one Ee by another which arose out of circumstances surrounding U's organizing campaign, unlawful where E failed to observe necessary safeguards or assure Ees that participation in interrogation was on voluntary basis w/o prospect of reprisal)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

Conagra, Inc. **248 NLRB No. 085**
(supervisor's response *just sign a U card* to remark of Ee that if she didn't hurry she (Ee) would be fired, not unlawful, since supervisor's reply not type of comment that would prompt response even though Ee replied she had signed card)

Permanent Label Corporation **248 NLRB No. 021**
(E questioning of Ee regarding U organizational activity violative, notwithstanding it may have been done in friendly manner)

Permanent Label Corporation **248 NLRB No. 021**
(questioning Ees as to why they wanted U violative notwithstanding Ees questioned had openly declared pro-U sympathies)

Paceco, A Division of Fruehauf Corporation **247 NLRB No. 166**
(on remand Bd adhered to finding of unlawful interrogations during critical period based on timing of interrogations and lack of evidence of valid purpose for questioning Ees on U sentiments)

The Saloon, Inc. **247 NLRB No. 156**
(remark not in the form of an interrogation but of a character likely to elicit a response revealing Ee's feelings about U held to have had practical effect of an interrogation and was unlawful)

Boyle-Midway, Inc., Division of American Home Products Corp. **247 NLRB No. 124**
(systematic interrogation about U with individual Ees in locus of authority, violative, where purpose of questioning was not revealed and no assurance against reprisals were made)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ee had heard anything about anyone trying to organize U in plant and how Ee felt about it, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ee had a U card for him to sign, unlawful, notwithstanding question was asked in joking manner, in view of E's hostility to U)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee who was member of U organizing committee if he had heard anything about anyone trying to organize U in plant, and what Ee thought about it, and upon Ee replying he was undecided stating he hoped Ee was not making mistake, unlawful)

Production Plated Plastics, Inc. **247 NLRB No. 076**

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(asking Ee if anyone was bothering him and if he was satisfied with job, violative since inquiry related to and concerned Ee's U activity)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(asking if Ee had signed U card, how Ee had voted, and if Ee was *with* E, unlawful)

Galax Apparel Corporation **247 NLRB No. 026**

Checker, Inc., d/b/a Checker Cab Company **247 NLRB No. 019**
(interrogating Ees as to whether they would cross picket line, violative)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(supervisor's engaging in interrogation w/o giving Ees assurance against reprisals, unlawful)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(questioning Ees shortly before unlawfully discharging them if they worked for E or for U's business agent, unlawful since question in juxtaposition with discharges may have conveyed notion that U aspect of their refusal to work overtime contributed to discharge decision)

Cashmere Lumber Company **JD-(SF)-93-80**
(although supervisor's conduct would have been unlawful in organizational setting, his asking Ee why he sought to involve official of parent organization in U's problems at plant, accompanied by statements that Ees did not need U as long as he held his management job and that he would *take care of Ees,* not unlawful, notwithstanding supervisor's *take-care-of* statement since, in context of settled bargaining relationship with U, there was nothing in supervisor's remarks or surrounding circumstances from which Ee could have perceived a threat or promise)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

Huron Copysette, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**
(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**

5030-4030 Solicitation of grievances

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter asking Ees to discuss problems and setting up of joint E-Ee committee, thereby soliciting grievances from Ees, unlawful)

Brooks Cameras, Inc. **250 NLRB No. 116**
(questioning of Ee concerning what Ees wanted on day after U made its bargaining demand, unlawful)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(E's vice-president asking Ees, during period of U campaign, *what their problems were* and impliedly promising to remedy them held violative)

St. Francis Hospital **249 NLRB No. 017**
(at E sponsored grievance meeting with Ees during critical period, E, in response to C, stating that he would *take a look and see what we can do* violated Act because he held out prospect of remedial action)

Conagra, Inc. **248 NLRB No. 085**
(holding meetings during U campaign at which Ees were told by plant manager to bring any problems to him which they could not work out with their supervisors, unlawful, where meetings of this type were unusual)

Leeson Electric Corporation **247 NLRB No. 203**

5030-4030—Cont.

(E holding meetings with varying Ee representatives chosen at random, unlawful, since initiated during U campaign in order to solicit grievances)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation where, in course of anti-U campaign meeting, E's attorney asked Ees to discuss their grips against E; the attorney was soliciting grievances and E did nothing to rebut presumption that it was promising to remedy such grievances)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if she had signed U card, unlawful, where supervisor called Ee's attention to E's notice regarding withdrawal of U cards, and in context of E's hostility to U and supervisor's reiteration of hostility)

Houston County Electric Cooperative, Inc. **247 NLRB No. 087**
(asking Ee during U campaign *what the problems were*, unlawful, absent any previous policy of periodically soliciting grievances; *such activity ... occuring in midst of U campaign inherently constitutes implied promise to remedy grievances and violates Section 8(a)(1)*)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(plant manager's solicitation of grievances and his promises to resolve them, unlawful where they were attempt to persuade Ees to abandon U)

Palomar Transport, Inc. **JD-(SF)-158-80**
(solicitation of grievances unlawful, where solicitation was not shown to have been established practice and impliedly held promise of rectification, thereby obviating need for U representation)

Crown Central Petroleum Corporation **JD-(SF)-135-80**
(asking Ees to talk to management about their problems not violative notwithstanding statement made during U campaign where it was longstanding company policy for Ees to take their problems to their supervisors)

Broad Street Lincoln Mercury, Inc. **JD-208-80**
(soliciting grievances from Ees, violative)

5030-4040 Concerning union membership, adherence or activities of others

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(although Ee called E on telephone and brought up subject of U activity, E's subsequent interrogation over telephone, unlawful, where E went beyond legitimate inquiry by pressing Ee for names of Ees involved in U and by devoting most of long conversation to questions about U)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E at meeting he called after being notified U had claimed majority asking Ees how many of them had signed up with U, unlawful, in context of extreme animus displayed by E at meeting, notwithstanding Ees did not answer)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present at subsequent interview with E's president)

Streamway Division of The Scott

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(supervisor's asking Ee if she knew if there were any Ees that had been talking about U, unlawful, notwithstanding E's claim that no violation existed because conversation occurred in working area and not in private office, supervisor did not press inquiry, and occurrence was isolated incident)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(interrogation as to identity of persons making statements at U meeting, unlawful)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ee to let him know if he heard anything about Ee organizing campaign, violative)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ees who were ring leaders in U drive, how the vote was going, and how much U was going to ask for, violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(asking Ee if he knew which Ees signed U cards and if he had signed a card, violative)

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(questioning Ee about U's organizing effort by low level supervisor violative where E's higher-level management had clearly indicated their anti-U feelings and had discharged supervisor who had become involved in U activity)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(interrogation of Ees as to whether they knew anything about Ees signing U cards, violative)

5030-4060 Concerning union meetings

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(supervisor asking Ee whether new hire attended U meeting, unlawful)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's interrogation of Ee as to whether she had attended U meeting, unlawful, in view of subsequent statements creating impression of surveillance and threatening Ee by claiming that U would cause loss of Ee's job)

Excavation-Construction, Inc. **248 NLRB No. 081**
(supervisor's interrogation of Ees concerning prospective U meetings w/o assurances against reprisals violates Act)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

5030-4070 Concerning employee group meetings

Streamway Division of The Scott

5030-4080 Concerning other union activities

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(conversations of E's board member, father, with unit Ee, daughter, concerning current levels of U support, not violative, where no interference or coercion proved)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor instructing Ee to admit to E's president that she had signed U card and was conversant with U's organizing efforts, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ees were paid $5 to sign U cards and inquiring if Ees knew it would cost $3 to get them back, violative)

Cashmere Lumber Company **JD-(SF)-93-80**
(although supervisor took Ee to lunch as a business propositon at least, in part, to delve into U situation at plant, and occurrence was not a chance or casual undertaking and came soon after supervisor tried to influence Ee's intra-U activities, supervisor's conduct held not unlawful since he neither said nor did anything from which a job-related threat or promise could be inferral)

Norym Company, Inc. **JD-847-79**
(asking Ee if she had heard any rumors of U activity, not unlawful, since isolated incident and at time of questioning there was no U activity at which questioning could be aimed; further, *it is questionable that asking Ee if she had heard any rumors of U activity, as opposed to asking if there was any U activity... is violation*)

5030-4090 Concerning protected activities

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(sales manager's questioning of Ee and his admonition to her that her walkout efforts were *not nice thing to do*, unlawful, since they were designed to coerce her to abandon her determination to walk out)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(asking Ees why they had not stopped Ee from filing certain papers with Bd)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(interrogating Ees as to who was leader in lodging Cs about supervision, unlawful)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(interrogating Ees as to whether they had signed letter and - if they had - why they had done so and whether they were aware that it suggested supervisor's discharge, violative, where interrogation constituted integral part of E's program, found unlawful herein, to discharge persons who signed the letter)

B. N. Beard Company **248 NLRB No. 016**
(interrogating Ees as to whether they intended to strike, closely followed by threat to discharge them if they did so, unlawful)

Sherwood-Trimble Medical Building **247 NLRB No. 160**
(interrogation of Ee concerning charges that Ee filed with Bd w/o complying with safeguards, unlawful)

Peschke Packing Company **JD-(NY)-33-80**
(interrogation of Ee as to why he had filed ULP charges against E and threats to make it rough for him, unlawful)

Roadway Express, Inc. **JD-281-80**
(superintendent questioning of Ee as to why Ee had called U business agent about allegedly unsafe truck and instructing Ee to call superintendent direct-

5030-4090—Cont.

ly, lawful, where superintendent was giving instruction to newly assigned driver as to proper procedure to follow in event of breakdown and superintendent did not forbid Ees from discussing safety matters or complaints with U officials)

Melissa Marie Fashions, Inc. **JD-177-80**

(violation where in context of unlawful discharge of strikers, E questioned Ees about whether they had complained to Bd)

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**

(enforcement denied where ct adhered to standards set down in *Bourne* in regard to whether E's interrogation of Ee violated 8(a)(1) and found that record in proceedings lacked substantial evidence to support conclusions contrary to those of ALJ, or to support view that interrogation in any way interfered with Ee rights)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**

(company president's asking Ee, during pre-election E campaign meeting with Ees, if Ee had written anonymous letter criticizing E's general manager, violative)

5030-7000 Interrogation concerning employee or others involvement in Board's processes

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**

(asking Ee if he intended to withdraw ULP charges he had filed violative)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**

(questioning Ee regarding investigation by Bd agent)

Nice-Pak Products, Inc. **248 NLRB No. 173**

(E who asked Ee about identity of Ees who testified against E during investigation of charges violated Act)

The Nestle Company **248 NLRB No. 106**

(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

Universal Service Contractors **247 NLRB No. 097**

(supervisor's questioning Ee regarding affidavit he gave Bd agent violative)

Albertson's Inc. **JD-(SF)-104-80**

(discipline of Ee for not meeting production quotas, not unlawful, notwithstanding fact that discipline followed closely in time unlawful interrogation of Ee; discipline was nothing more than routine and innocuous exercise of E's authority)

Albertson's Inc. **JD-(SF)-104-80**

(questioning Ee about Ee's participation in Bd investigation, unlawful, since E did not show that questioning was for legitimate purpose and there was no requisite showing of voluntariness to Ee's participation in questioning)

5030-8000 Permissible to elicit information necessary in preparation of trial or hearing

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

(E violated 8(a)(1) as well as 8(a)(4) where E, in furtherance of its state civil suit against Ees, obtained alleged discriminatee's deposition concerning matters relating to E's defenses in pending Bd ULP proceeding and inquired of fellow Ee whether supervisor involved in alleged ULPs knew that Ees were trying to organize; since it could reasonably be expected that Ee would, as she did, tell alleged discriminatee of conversation with E, question had its mexus in taking of deposition resulting from filing of state proceeding which was also found unlawful herein)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

(taking Ees' depositions in state civil lawsuit, filed by E against them for libel and wrongful interference, and involving questioning in depth regarding Ees' U activities, unlawful, where Ees were not deposed voluntarily, there were no assurances that reprisals would not be taken, questions far exceeded relevance to civil lawsuit, and purpose of questioning which was discovery of evidence for pending Bd hearing, was not conveyed to Ees)

Cashmere Lumber Company **JD-(SF)-93-80**

(supervisor's asking Ees for their signatures on ptn for purpose of supporting E's discharge of Ee which was subject of ULP allegation and grievance procedure not unlawful as *privileged investigative gesture,* since supervisor's conduct did not discourage Ees in exercise of their statutory right nor did it have such effect, and it was unlikely, particularly in view of supervisor's assurances against reprisal, that his presentation of ptn would have tended to impair Ees' ability to testify in any ensuing grievance or Bd proceeding)

5030-8025 Employees must be apprised of purpose

Logan Coca Cola Bottling Company **250 NLRB No. 164**

(interrogation of Ees by E's labor relations consultant violative where he neither advised them of purpose of questions nor indicated to them that participation was voluntary)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**

(interrogating Ee concerning disclosures made to Bd agent during investigation of ULP charge, violative)

5033 HARRASSMENT OF UNION ADHERENTS OR OTHER EMPLOYEES

5033-0100 Generally

General Telephone Company of Michigan **251 NLRB No. 099**

(Bd looks to effect such conduct may reasonably tend to produce rather than subjective reaction that is actually engendered)

5033-3300 By employees

General Telephone Company of Michigan **251 NLRB No. 099**

(disciplining Ee for harassing two other Ees by various derogatory, threatening and vulgar remarks and spitting at one of them for their not having participated in strike held not violative where GC had not established that conduct was *prima facie* or, *in fact,* protected activity)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(telling Ee that if she signed U card *they would probably be on your back all the time* held unlawful threat of harassment)

5033-5000 By supervisors

Peavey Company **249 NLRB No. 110**

(supervisor harassing Ees by following them around, unlawful)

Custom Coating

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**

(foreman's action in throwing U grievance in trash container with comment, *this is what I think of your damn U* unlawful)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**

(conversation in which supervisor asked Ee why she was wearing U button because she had earlier expressed opposition to U and told Ee that she could do as she wished but that she was making ass out of him because he always stuck behind her and so did management, held not to constitute harassment)

5033-8300 By employer

O.K. Machine

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**

(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

Neckover Trailer Manufacturing Company **JD-256-80**

(E's report to sheriff and resultant investigation of Ee following his confrontation with supervisors at plant held not harassment or intimidation of Ee and not motivated by Ee's U activity but by Ee's characteristic traits of temper and belligerent conduct toward authority)

5036 CHANGES IN CONDITIONS OF EMPLOYMENT OR THREATS THEREOF

5036-0100 Generally

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(claim that improvements were made during U organizing campaign for legitimate business reasons such as fostering Ee productivity is no defense unless timing of announcement or implementation of improvements is explained)

5036-0117 Violation where action motivated in part by protected activity

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**

(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

5036-0800 Timing

Aztec Manufacturing Company **JD-(SF)-92-80**

(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

5036-0812 During pendency of Board proceeding

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**

(suggesting to Ee that she could disregard Bd subpoena, encouraging her not to appear at Bd hearing and threatening her with reprisal unless she testified favorably to E, unlawful)

5036-0820 Before petition filed

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**

(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

5036-0825 During critical pre-election period

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

(wage increase granted during critical preelection period, unlawful, where announcement was not made long before U's organizing campaign as claimed by E, and increase was not conferred consistent with past practice but was unprecedented for time of year it was granted)

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Suburban Ford, Inc. **248 NLRB No. 051**

(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**

(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

5036-1700 **Concessions limited to employees outside bargaining unit**

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

5036-3300 **Employer's knowledge of concerted nature of activity**

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**

(ct agreed with Bd that E discharged Ee at least in part because of Ee's protected concerted activity but remanded for finding on issue of whether E knew that activity was concerted)

5036-5000 **Employer's knowledge of protected activity**

Leisure Lodge Nursing Home **250 NLRB No. 134**

(discharge of Ees who were attempting to redress grievances violative; moreover discharges would have been violative even if E merely thought they were trying to address grievances)

Aztec Manufacturing Company **JD-(SF)-92-80**

(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

5036-6700 **Forms of changes in conditions of employment**

5036-6704 Wage or bonus withheld

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

(withholding scheduled pay increase w/o specific announcement because of Ees' U activities violative, notwithstanding Ees were unaware of denail of increase until E announced that it would grant increase; moreover, fact that E acted on advice of its attorney does not relieve it of liability)

5036-6708 Denial of promotion

Coating Products, Inc. **251 NLRB No. 170**

(refusal to promote Ee to leadman where he was already performing work until after U campaign violative)

5036-6709 Reduction in wages

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**

(enforcement denied where ct found that record of proceedings lacked substantial evidence to support conclusions contrary to ALJ; ct rejected argument that E's statements had *tendency in the totality of circumstances to intimidate* Ees or Ees feared that they would lose two hours *show up* pay or be laid off)

5036-6712 Denial of wage increase

Northern Telecom, Inc. **250 NLRB No. 085**

(denial of merit increase)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**

(failure to give normal periodic increase after 3 months satisfactory service so as to give impression that it was U's fault, unlawful)

Boyle-Midway, Inc., Division of American Home Products Corp. **247 NLRB No. 124**

(violation where E told Ees that there would be no raises granted because of *U activity*)

Tartan Marine Company **247 NLRB No. 073**

(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

5036-6713 Withholding of expected wage increase or benefit

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

(withholding scheduled pay increase w/o specific announcement because of Ees' U activities violative, notwithstanding Ees were unaware of denail of increase until E announced that it would grant increase; moreover, fact that E acted on advice of its attorney does not relieve it of liability)

5036-6714 Change in absenteeism rule for reporting

Charge Card Association **247 NLRB No. 119**

(institution of policy requiring doctor's note after 1-day absence violative where rule was instituted after Ees engaged in protected strike activity)

5036-6715 Change in policy regarding observance of hours of work

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**

(change in rules requiring written note of explanation for tardiness, unlawful, since resulted from E's efforts to discourage U membership or support)

5036-6718 Discipline or warnings thereof

O.K. Machine

United States Postal Service **251 NLRB No. 033**

(issuance of written warnings for alleged insubordinate conduct during and after informal grievance meeting, violative, where conduct was not *opprobious* or *extreme* and Ees' continued discussion of grievance following meeting was part of *res gestae* of grievance meeting which had no consequential disruptive effect since Ees did return to work in response to E's direct order)

United States Postal Service **250 NLRB No. 156**

(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

United States Postal Service **250 NLRB No. 156**

(threatening U steward during grievance presentation with disciplinary action if he didn't shut up, unlawful)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(threatening attorney Ees with discipline for participating in clerical picket line, and entering notations in their personnel files that they had engaged in such activity, unlawful)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**

(violation where E issued warning notice to Ee because of complaints to state and federal agencies)

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**

(written warning issued as enforcement of unlawful no-solicitation rule, unlawful)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

(reprimanding Ee who had solicited another Ee who was on work time, unlawful, since was addressed only to prime U adherent and was intended more to impede her U activities than to maintain production and order in restaurant; further, reprimand was to enforce unlawful rule)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff

5036-6718—Cont.

and offered Ee adherent severance pay to induce her to seek other employment)

United Parcel Service **247 NLRB No. 134**
(warning for Ee's refusal to unlock icey trailor door because he considered conditions unsafe, violative)

United Parcel Service **247 NLRB No. 134**
(issuance of reprimands to individual Ee for disobeying orders not to talk at work, unlawful, as discriminatory change in working conditions were instigated because Ee filed grievance with U)

Fall River Savings Bank **247 NLRB No. 088**
(issuance of written warning to Ee for questioning supervisor about calling in Ees for Saturday work w/o following seniority, unlawful)

United States Postal Service (Las Vegas, Nevada) **JD-(SF)-214-80**
(violation where E issued warning to Ee because he refused to participate in interview concerning blank spaces on his timecard w/o a representative)

Krafcor Corporation **JD-259-80**
(preelection speech threatening Ees with more severe discipline if they selected U as their representative, including examples referring to Ees in context of incidents for which they would be discharged, held unlawful and election set aside)

Four Rivers Coal Company **JD-209-80**
(violation where supervisor issued letter of reprimand to Ee who, as part of concerted Ee grievance on loss of wages, had voiced dissatisfaction with supervisor's adequacy)

Albertson's Inc. **JD-(SF)-104-80**
(discipline of Ee for not meeting production quotas, not unlawful, notwithstanding fact that discipline followed closely in time unlawful interrogation of Ee; discipline was nothing more than routine and innocuous exercise of E's authority)

Garden State Motors Co. **JD-160-80**
(imposition of disciplinary rules violative where rules were imposed in response to news of U's organizing efforts)

United States Postal Service **JD-(SF)-273-79**
(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

Northern Telecom, Inc. v. N.L.R.B. **618 F.2d 421 (C.A. 6, 1980)**
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(violation where E issued warning to active U supporter allegedly for harassing other women)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(violation where E issued warning to active U supporter allegedly for harassing other women)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(issuing warning to active U supporter assertedly for leaving her station during working hours w/o permission, violative, where Ee had obtained permission from supervisor to leave her station)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(issuing warning to active U supporter assertedly for leaving her station during working hours w/o permission, violative, where Ee had obtained permission from supervisor to leave her station)

5036-6720 Discharge

Hawthorne Mazda, Inc. **251 NLRB No. 038**
(discharge of Ee engaged in protected concerted activity when terminated for criticism of management, unlawful, where criticism occurred in manager's office rather than on shop floor where it could have affected manager's status in eyes of other Ees; manager, in effect, converted meeting into informal grievance session; and Ee's remarks were not so indefensible as to render him unfit for further service nor were they made simply to ridicule or denigrate management but were offered in connection with new pay system to which Ees were objecting)

Giuliem Apparel Corp. **JD-162-80**
(discharge of Ee for fear that if Ee attempted to return to work, other Ees would think E was forcing her to return and would engage in work stoppage, unlawful)

5036-6720-0100 Generally

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(Ee held discharged where foreman informed Ee to *Go home, punch-out, that's it* after Ee complained about safety conditions and refused to work with allegedly unsafe machine; E's contention that Ee quit was pretext to conceal unlawful discharge)

5036-6720-0150 What constitutes discharge

Pink Supply Corporation **249 NLRB No. 091**
(no discharge of economic strikers proved where E told strikers' spokesman that it would have to act as though they were quitting and find replacements and -- when spokesman denied Ees were quitting -- asked what spokesman would call their action and what E was supposed to do; spokesman then volunteered that Ees would come in and clean out their desks which they did next day; E did not create ambiguous situation by wrongdoing, did not unequivocally refuse to permit strikers to return to work or make further inquiries into its intentions futile; and each party was equally able to rectify the uncertainty)

Emblematic Jewellry Products of U.S.A., Inc. **JD-814-79**
(collecting timecards of Ees as they punched out prior to quitting time, held not discharge, particularly where E's owner asked Ees if they were quitting as they punched out and subsequently they were called and asked to return to work)

5036-6720-4300 Constructive discharge

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(Ees who refused to work at reduced piecework rates constructively discharged and fact that they packed up their tools before they left not controlling)

Redlands Christian Migrant Association **250 NLRB No. 027**
(violation by constructively discharging strikers where E gave them choice of either quitting or giving up strike and supporting strike leader who had just been discharged, and strikers got up and left with strike leader)

General Meats, Inc. **247 NLRB No. 153**
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

Charge Card Association **247 NLRB No. 119**
(striking Ees who refused to return to work because of E's violative conduct of placing them on probationary status found to have been constructively discharged)

5036-6720-5000 Strikers

Redlands Christian Migrant Association **250 NLRB No. 027**
(violation by constructively discharging strikers where E gave them choice of either quitting or giving up strike and supporting strike leader who had just been discharged, and strikers got up and left with strike leader)

Redlands Christian Migrant Association **250 NLRB No. 027**
(discharge for inducing co-workers to join and for leading economic strike, unlawful)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(discharge and refusal to reinstate Ees unlawful, since Ees were economic strikers who were subject to permanent replacement but not to discharge)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**
(discharging Ees because they engaged in strike to protest wages, violative)

B

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(E's telling economic strikers who had requested to return to work that they had been replaced and did not have a job, held not sufficient to sustain allegation of unlawful *discharge;* higher management of E never utilized discharge terminology, *Cf. Ridgeway Trucking Co.,* 243 NLRB No. 160)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. **619 F.2d 153 (C.A. 1, 1980)**
(ct held there was no substantial evidence to support Bd's finding of nexus between Ee protest over discharge of supervisor and Ees' legitimate interests)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. **619 F.2d 153 (C.A. 1, 1980)**
(Ees' strike over discharge of supervisor not protected activity where protest was not over actual conditions of employment of Ees; none of Ees who protested gave slightest indication that discharged supervisor's assistance to their unionization efforts motivated their protest)

5036-6720-5900 Of supervisor as integral part of conduct aimed at discouraging exercise of Sec. 7 rights

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

5036-6720-7300 Protesting unsafe conditions

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(discharge of Ee who alone complained about safety conditions and refused to operate allegedly unsafe machine, unlawful notwithstanding Ee did not invoke contractual grievance procedure)

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(whether Ee's C about safe working conditions is real or imaginary, it is immaterial to the exercise of Ee's Section 7 rights to so complain)

Lyman Steel Company **249 NLRB No. 040**
(U adherent's quitting job, not only because E denied Ee's vacation request, but also because of E's implicit rejection of Ee's plea for security at his work station, held *constructive discharge*)

Roadway Express, Inc. **JD-281-80**
(discharge of Ee for refusing to obey order, lawful, notwithstanding Ee's contention that he was discharged for making a safety complaint to Department of Transportation since there was no basis for concluding that E had any knowledge of Ee's compalaint)

Roadway Express, Inc. **JD-281-80**
(discharge of Ee for refusing to drive truck because of asserted safety defects, lawful, where Ee contrived defect which would serve to justify his action in refusing to drive truck)

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5036-6720-7500 For engaging in protected activity

Alfa Leisure, Inc. **251 NLRB No. 088**
(discharge of Ee for rude conduct violative where conduct occurred in collective-bargaining setting and in fact occurred while Ee was a U representative and was present solely for purpose of bargaining)

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

F. W. Woolworth Co. **251 NLRB No. 152**
(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Pyromactics, Inc. **251 NLRB No. 141**
(discharge of Ee for circulating ptn to obtain time off from work during holiday season, unlawful, since Ee's conduct constituted protected concerted activity; assuming Ee's *quartz flu* statement (meaning Ees as a group would fake sickness so as not to report for work during holiday period) played role in E's decision to discharge Ee, E failed to demonstrate that it would have discharged Ee absent his circulation of ptn)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(statements to U adherent that he should take U or E and that U could not find him any jobs, unlawful threat of reprisal)

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(discharge of Ee for encouraging Ees during nonworking time to engage in walkout if they were required to work beyond 6 p.m. without being provided a meal unlawful)

Jurisearch, Inc. **250 NLRB No. 091**
(discharge of Ee for distributing letter to fellow Ees urging them to organize for improved wages and working conditions, unlawful)

Leisure Lodge Nursing Home **250 NLRB No. 134**
(discharge of Ees who were attempting to redress grievances violative; moreover discharges would have been violative even if E merely thought they were trying to address grievances)

Sullair P.T.O., Inc. **250 NLRB No. 104**
(discharge of Ee unlawful, notwithstanding E's contention that discharge was result of Ee's insubordination and abusive language directed at E's manager in Ee's protest of change in company policy affecting condition of employment, where Ee's language was generally directed toward company and not to E's manager and was type of language used commonly in Ee's shop)

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation, where E threatened Ee with discharge if he posted notice about marathon sponsored by U)

Roadway Express, Inc. **250 NLRB No. 061**
(where some Ees had engaged in unauthorized work stoppage and U steward returned to E's facility after leaving work at end of his regular work day, E's discharging steward for purportedly participating in unauthorized work stoppage held violative notwithstanding E's assumed good-faith belief that steward had participated in work stoppage upon returning to facility; Ee, in his capacity as U steward,was engaged in efforts to end work stoppage when he was discharged)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(discharge of U adherent, unlawful, where for his defense of U in argument in view of E's hostility towards U and U activities)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(discharge of Ees at center for disturbed and displaced youth for their *negativism* about management and its policies and programs, lawful, since Ees' griping not protected in view of lack of concertedness where no express confrontational action taken, and since such concerns regarding quality of program management's perrogative, and Ees' methods were excessive causing disruption and demoralizing residents and other Ees)

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**
(discharge of Ee who acted as spokesman to express dissatisfaction to E about Ees' wages and working conditions, unlawful, where discharge was motivated by *disturbance* created by Ee in registering such dissatisfaction)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(discharge of Ee assertedly for failing to properly perform in his *employee representative* status, violative)

Babcock

Han-Dee Pak, Inc. **249 NLRB No. 107**
(violation where E warned Ees and threatened them with discharge for discussing wages with other Ees)

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(discharge of Ee for refusal to assist E in defeating claims made by Wage and Hour Division of U.S. Department of Labor, unlawful)

Pink Supply Corporation **249 NLRB No. 091**
(no discharge of economic strikers proved where E told strikers' spokesman that it would have to act as though they were quitting and find replacements and -- when spokesman denied Ees were quitting -- asked what spokesman would call their action and what E was supposed to do; spokesman then volunteered that Ees would come in and clean out their desks which they did next day; E did not create ambiguous situation by wrongdoing, did not unequivocally refuse to permit strikers to return to work or make further inquiries into its intentions futile; and each party was equally able to rectify the uncertainty)

Southwest Detroit Hospital **249 NLRB No. 071**
(discharge of licensed pratical nurse who informed supervisor he was concerned he had not been put in charge of shift and received premium charge pay provided for under contract and that he thought supervisors had made stupid decision by placing nursing technician in charge not unlawful, where discharge for his precipitous decision to leave subsequent meeting with supervisor and reusal to discuss matter further rather than for invoking terms of bargaining agreement)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(discharge of Ee, unlawful, where for her leadership in lodging Cs concerning supervisor)

Colonial Stores Incorporated **248 NLRB No. 142**
(violation where Ee was discharged because she, with her husband's assistance, circulated ptn among Ees protesting E's alleged failure to abide by contract and U's purported failure to enforce contract, and because she displayed signs in her husband's car at E's parking lot protesting E's admitted failure to implement grievance settlement; Ee's protests were found herein to constitute protected concerted activities)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

Bide-A-Wee Home Association **248 NLRB No. 110**
(discharge of Ees who had struck in protest over discharge of supervisor, unlawful where discharge shortly after E had assured Ees that no one would be discharged made other Ees fear for their own job security; discharged supervisor had voiced Ees' objections to E about changes in their working conditions)

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company **248 NLRB No. 069**
(violation where 2 Ees were discharged for refusing to do assigned job, while asking -- in absence of U representation or enforceable grievance procedure -- to see management to complain about being assigned work outside their job classification, and then departing from plant as strikers to protest situation)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**

36-6720-7500—Cont.

(violation where U steward was discharged for fulfilling his express contractual responsibility by questioning E's change in practice in not serving unit member sandwich at end of 8-hour shift)

Allied Aviation Service Company of New Jersey, Inc. **248 NLRB No. 026**
(suspension and subsequent discharge of Ee, unlawful where E's actions were caused by Ee's protected activity of sending letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft)

Permanent Label Corporation **248 NLRB No. 021**
(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

Pioneer Finishing Corporation **247 NLRB No. 182**
(remark to Ee that if fellow Ee *went* for distributing leaflets critical of E's safety conditions, then Ee and another Ee *would be next* constituted unlawful threat of discharge)

Ontario Knife Company **247 NLRB No. 168**
(discharge and refusal to reinstate Ee assertedly for leaving plant w/o permission, unlawful, where walkout was preceded by grievance discussion and was result of protected activity; even if offensive and *off color* remarks by supervisor were proximate cause of Ee's walkout, supervisor's statements must be considered in context of entire conversation, which was clearly protected concerted activity)

United Parcel Service **247 NLRB No. 134**
(implied threat of discharge for filing grievance, violative)

First Termite Control Co., Inc. **247 NLRB No. 106**
(discharges for participation in work stoppage in protest of E's treatment of fellow Ee in regard to his pay, unlawful)

Fall River Savings Bank **247 NLRB No. 088**
(discharge of Ee for questioning supervisor about calling in Ees for Saturday work w/o following seniority and for showing other Ees written warning received as result of such questioning, unlawful)

4

Yellow Freight System, Inc. **247 NLRB No. 028**
(no violation where driver refused or delayed work assignment and his termination -- whether it be deemed a quit or a discharge -- was based on E's legitimate interest in moving freight rather than, as contended, Ee's assertion of a contractual right)

Peschke Packing Company **JD-(NY)-33-80**
(no violation by discharge of Ee (later reduced to suspension) where reason was found to be Ee's ruining company property rather than belief Ee would complain about supervisor's breach of contract by doing unit work; Ee had previously complained about such contract violations with impunity)

Royal Travel Corporation **JD-306-80**
(discharge of Ees because of their roles as spokespersons for Ee group which sought wage increase, unlawful; contentions discharges because of economic reasons or deficiencies of Ees, rejected)

McLean Trucking Company **JD-368-80**
(threatening Ee with discharge because she had signed U card, violative)

Hotel

Shuttle Motor Corporation **JD-327-80**
(discharge of Ee allegedly for inquiring of state agency regarding legality of *back stubbing* i.e. E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not unlawful, since Ee's activity not concerted where *back-stubbing* not matter of common complaint; further, Ee called agency before any other adverse action taken against him and subsequent *back-stubbing* against him rectified)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(discharges for concerted refusal to work overtime, unlawful)

Four Rivers Coal Company **JD-209-80**
(discharge of Ee for promoting among Ees their right to cost of living increase and particularly an earlier clothing allowance, unlawful)

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's statement to U steward to the effect that if he performed his steward's duties with zeal considered excessive by supervisor, supervisor would make steward's job unpleasant and cause his eventual severance, unlawful)

Melissa Marie Fashions, Inc. **JD-177-80**
(where Ees had received and complained as a group about bad checks, and had asked E to pay them in cash in future, E's discharge of Ees who collectively walked out in protest against E's paying Ees in check rather than cash, violative)

Standard Bridge Corporation **JD-174-80**
(selecting Ees for termination rather than transfer because of their attempts to become U members, unlawful)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(discharge of Ee because she solicited Ees to see individual she considered to be *boss* rather going through regular channels regarding their complaints held violative, since Ee's conduct was protected activity and was not so flagrantly in derogation of E's *chain of command* or managerial authority as to loose protection of the Act notwithstanding *boss* had severed all official connections with E long before incident since subsequent conduct led Ee to believe he still exerted authority)

Roadway Express, Inc. **JD858-79**
(written warning issued Ee for refusing to drive tractor which Ee believed to be unsafe, unlawful; Ee's refusal to drive tractor amounted to attempt to require E to adhere to safety provisions of bargaining agreement)

Tri-State Truck Service, Inc. v. N.L.R.B. **615 F.2d 65 (C.A. 3, 1980)**
(Bd's finding that two Ees were unlawfully discharged for engaging in protected concerted activity reversed in absence of substantial evidence on record as whole that E knew of such concerted activity from telephone conversation with individual Ee who only asked about time and one-half for working on Saturday with no indication that subsequent decision of refusing to work was made on other than an individual basis; furthermore, E's knowledge that two discharged Ees lived together does not infer knowledge of concerted activity)

Tri-State Truck Service, Inc. v. N.L.R.B. **615 F.2d 65 (C.A. 3, 1980)**
(Bd's finding that two Ees were unlawfully discharged for engaging in protected concerted activity reversed in absence of substantial evidence on record as whole that E knew of such concerted activity from telephone conversation with individual Ee who only asked about time and one-half for working on Saturday with no indication that subsequent decision of refusing to work was made on other than an individual basis; furthermore, E's knowledge that two discharged Ees lived together does not infer knowledge of concerted activity)

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(discharge for requesting increase in salary and pay for overtime, unlawful)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**
(ct agreed with Bd that E discharged Ee at least in part because of Ee's protected concerted activity but remanded for finding on issue of whether E knew that activity was concerted)

5036-6720-9000 Preventing employees from engaging in protected activity

Overnite Transportation Company **251 NLRB No. 140**
(discharge of Ee truckdriver and refusal to reinstate him assertedly because he refused to drive, unlawful where Ee was complaining with other Ees about threat to personal safety because of driving during strike; Ee was refusing to drive as part of concerted attempt, on behalf of both himself and other drivers, to have safer working conditions and Ee's discharge was to discourage Ee and other Ees from engaging in these activities)

General Thermo, Inc. **250 NLRB No. 158**
(threat that organizers of U could be fired, unlawful)

5036-6725 Downgrading or demotion

Werth Engineering, Inc. **JD-295-80**

5036-6733 Illegal conditions on reinstatement

5036-6733-3300 Of strikers

Harding Glass Industries **248 NLRB No. 091**
(offer of reinstatement to strikers by E who had unlawfully withdrawn from multiE bargaining, on terms inferior to those contained in newly negotiated contract with multiE Association that E bound to honor violative)

5036-6733-6700 Of other employees

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

5036-6735 Prohibiting solicitation and/or distribution of literature during employees own time on employer's premises

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(rule on solicitation and distribution lawful since it was applied in such manner as to convey clear intent to permit solicitation or distribution during breaks and other periods when Ees were not at work)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations

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on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Conagra, Inc. **248 NLRB No. 085**
(informing Ee who had had argument with Ee who was wearing *Vote No* hat that she was not to talk U on company time and U literature was not to be passed out in plant, unlawful, since statement not limited to prohibition during work))

Leeson Electric Corporation **247 NLRB No. 203**
(maintaining rule which prohibited solicitation at any time in work areas, unlawful)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstance of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

5036-6737 Layoff

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(not unlawful where necessitated by economic conditions)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(selection of U adherent for economic layoff, unlawful, since motivated by adherent's U activities where previous unlawful warning letters were factor, E's owner had suggested to adherent she might be happier working elsewhere and offered her severance pay to seek other employment)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(E's laying off pro-U Ees and shortly thereafter adopting policy of sending Ees home early when assigned production tasks were completed, rather than following pre-election traditional policy of *assuring* Ees *continuous full pay check*, violative)

5036-6741 Less favorable treatment

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

5036-6743 Harsher working conditions or rules

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**
(economically motivated rule changes not violative notwithstanding instituted day after election which E contested)

Weyerhaeuser Company **251 NLRB No. 097**
(imposing new restriction on Ee smoking when work was caught up or when machines were down, violative)

Weyerhaeuser Company **251 NLRB No. 097**
(more stringent enforcement of rules against Ees for leaving work areas w/o permission as result of U campaign, violative)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(assignment of more arduous tasks to Ee, unlawful, where for leadership in lodging Cs regarding supervision)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

Leyendecker Paving, Inc. **247 NLRB No. 010**
(truckdriver's assignment to *different* job was not assignment of more onerous work where it was result of traffic accident and not U activities)

5036-6744 Closer supervision

Peavey Company **249 NLRB No. 110**
(supervisor harassing Ees by following them around, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(where entire work force visible to supervisors, no unlawful surveillance, absent evidence E watching Ees more closely during U campaign)

5036-6745 Lockouts

Century Moving

Harding Glass Industries **248 NLRB No. 091**
(refusal to reinstate ULP strikers after they requested reinstatement constitutes lockout)

5036-6746 Expulsion from plant

Lika Corporation **JD-(SF)-69-80**
(denying Ee, suspected of starting 2 fires in E's plant; access to E's parking lot when he was not working not violative)

5036-6750 Withdraw, deny or delay privileges

Dick Seidler Enterprises, d/b/a Joe

5036-6752 Relocating duty station

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's attempt to isolate U supporters by restricting movements of some Ees and relocating work station of another Ee, unlawful)

5036-6754 Refusal to employ or reemploy

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 150**
(refusal to rehire Ee upon his request because he filed claim for back overtime wages with state agency, unlawful; Ee's action was concerted as well as protected, and E knew it was concerted)

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**
(E's action of disqualifying Ee as substitute driver, violative where E was motivated by Ee's participation in protected concerted activity for mutual aid of all Ees which entailed sending letter critical of E's operations to federal agency which provided substantial part of E's funding)

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**
(refusing to consider E for full time position of senior bus driver and failure to appoint him to such position, violative where Ee was qualified for such position because he had been filling in as permanent substitute, and such discriminatory treatment was motivated by E's participation in protected concerted activity for mutual aid of all Ees which entailed sending letter critical of E's operations to federal agency which provided substantial part of E's funding)

Ontario Knife Company **247 NLRB No. 168**
(discharge and refusal to reinstate Ee assertedly for leaving plant w/o permission, unlawful, where walkout was preceded by grievance discussion and was result of protected activity; even if offensive and *off color* remarks by supervisor were proximate cause of Ee's walkout, supervisor's statements must be considered in context of entire conversation, which was clearly protected concerted activity)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**
(E's refusal to hire Ees of predecessor E because they had engaged in strike against predecessor to protest wages violative)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**
(E's refusal to hire Ees of E's predecessor because they sympathized with predecessor E's Ees who were engaging in strike to protest wages paid by predecessor E, violative)

Frank Briscoe Incorporated **247 NLRB No. 006**
(refusal to reemploy certain Ees laid off as a group because, after their lawful layoff, some of the Ees filed discrimination charges with EEOC, unlawful, since filing of such charges constituted protected concerted activity under Act, regardless of the merit of such charges)

B

The Royal General Company **JD-17-80**
(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**
(mtn for summary judgment against E dismissed where it was clear from record that no genuine issues as to facts material to resolution of instant

5036-6754—Cont.

action existed; ct not pursuaded that plaintiff made *prima facie* case regarding E's discrimination against her for U activities by firing her and not granting her maternity leave)

5036-6762 Refusal to reinstate strikers

Fun Striders, Inc. **250 NLRB No. 087**
(refusal to reinstate strikers who had distributed protected, but nontheless, politically inflamatory materials, violative)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(discharge and refusal to reinstate Ees unlawful, since Ees were economic strikers who were subject to permanent replacement but not to discharge)

Central Cadillac Company **JD-243-80**
(E's refusal to allow striking Ees to return to work w/o doctor's certificate, unlawful, notwithstanding E's contention that Ees made no valid unconditional offer to return to work, where strikers reported in body to E's premises at regular reporting time, most in work clothes; furthermore, medical certificate requirement instituted night before return and, subsequently, never enforced)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(refusal to reinstate economic strikers upon their request to return to work assertedly because *they had been replaced and did not have a job*, violative, where there was scant evidence proffered by E to show that it had promptly and validly employed new permanent Ees to replace strikers prior to the latters' request to return to work)

5036-6770 Partial or complete termination or liquidation of business

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

C

Aztec Manufacturing Company **JD-(SF)-92-80**
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

5036-6777 Suspension

F. W. Woolworth Co. **251 NLRB No. 152**
(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Allied Aviation Service Company of New Jersey, Inc. **248 NLRB No. 026**
(suspension and subsequent discharge of Ee, unlawful where E's actions were caused by Ee's protected activity of sending letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft)

Peschke Packing Company **JD-(NY)-33-80**
(no violation where suspension was found to be for Ee's disregard of company policy by taking excessive time for relief breaks rather than for his complaint about supervisor's breach of contract by doing unit work)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(contention that Ees were properly suspended for refusing for safety reasons to perform job assignment, purportedly because their action was unprotected because it violated contract, rejected, since Ees had sincere belief that abnormally dangerous condition existed and their actions were both sincere and reasonable)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(suspension of Ees for refusing to perform job assignment for safety reasons, unlawful, since Ees' conduct was concerted, and not individual, action, it constituted protected activity, and E failed to present alleged violation of contract as affirmative defense)

5036-6779 Transfer of work elsewhere

Hall of Mississippi, Inc. **249 NLRB No. 119**
(telling Ees that they were being laid off because of their U activities and implying that E would transfer work from local plant to another plant, violative)

5036-6781 Loss of overtime work

Werth Engineering, Inc. **JD-295-80**

5036-6782 Rescheduling of hours

Dick Seidler Enterprises, d/b/a Joe

5036-6783 Workload increased

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(increasing Ee production rates in reprisal for Ees' support and activities on behalf of U, unlawful)

5036-6784 Change in vacation policy

Streamway Division of The Scott

5036-6785 Transfer to another job

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E's implementation of job rotation plan that was designed by E to transfer leading U adherent to another job that was less of his liking, unlawful)

Suburban Ford, Inc. **248 NLRB No. 051**
(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

National Southwire Aluminum **247 NLRB No. 175**
(E who transferred Ees to different jobs in retaliation for Ees' U activities violated Act notwithstanding job assignments were less physically demanding and paid same salary)

Clements Wire and Manufacturing Company, Inc. **JD-33[illegible]-80**
(transfer of Ee to more physically demanding job and one which was painful for her, because she would not submit to supervisor's interrogation about U, unlawful)

5036-6786 Withholding vacation pay

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(not granting vacation pay to ULP strikers who were unlawfully not recalled by eligibility date, though strike over, violative, as benefits vested on that date notwithstanding they had not been recalled)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(denying accrued vacation pay to striking Ees, unlawful)

5036-6788 Denial of paid vacation

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

5036-6789 Reduction in work

Dick Seidler Enterprises, d/b/a Joe

5036-6790 Denial of or change in insurance coverage

J. J. Cassone Bakery, Inc. ***247 NLRB No. 032***
(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

5036-6791 Discrimination against supervisors

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(discharge of supervisor solely for that supervisor's own U activities does not contravene...Act)

5036-6793 Change in work rules

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's attempt to isolate U supporters by restricting movements of some Ees and relocating work station of another Ee, unlawful)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation, where E changed its lenient work rules to forbid Ees who were demanding improved terms of employment to talk to customers or other Ees)

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

Mather Federal Credit Union **JD-(SF)-8-80**
(disparately enforcing work rule only against Ees engaged in U activity)

5036-6796 Change in loan policy

St. Francis Hospital **249 NLRB No. 017**

5036-6798 Change in lunch and/or break period practices

Battery Bill, Inc. **249 NLBB No. 030**

Conagra, Inc. **248 NLRB No. 085**
(threat to eliminate bathroom breaks in bargaining if U came in, unlawful)

5036-7500 Affirmative defenses to charges of changes in conditions of employment

5036-7525 Business management considerations

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(E's defense that reason for discharge of Ee truckdriver was Ee's damaging engine rejected, notwithstanding fact that damage gave E cause to discharge Ee, since real reason for discharge was Ee's refusal to assist E in defeating claims made by Wage and Hour Division of U.S. Department of Labor)

Aztec Manufacturing Company **JD-(SF)-92-80**
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

5036-7550 Good-faith belief that employee misconduct justified change

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in numicipal ct)

5036-7550-6700 No defense if conduct did not in fact occur

General Telephone Company of Michigan **251 NLRB No. 099**
(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

Roadway Express, Inc. **250 NLRB No. 061**
(where some Ees had engaged in unauthorized work stoppage and U steward returned to E's facility after leaving work at end of his regular work day, E's discharging steward for purportedly participating in unauthorized work stoppage held violative notwithstanding E's assumed good-faith belief that steward had participated in work stoppage upon returning to facility; Ee, in his capacity as U steward,was engaged in efforts to end work stoppage when he was discharged)

Babcock

5036-8300 Threats of changes in conditions of employment

5036-8301 Generally

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

5036-8302 Nonspecific threat of reprisal

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(threatening Ees if they did not sign document which favored E by stating that Ee was satisfied with E's working conditions and did not want U, unlawful)

San Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(sales manager's questioning of Ee and his admonition to her that her walkout efforts were *not nice thing to do*, unlawful, since they were designed to coerce her to abandon her determination to walk out)

Clark Equipment Company **250 NLRB No. 178**
(telling Ees it would be *hell* to work there if they voted for U, violative)

Clark Equipment Company **250 NLRB No. 178**
(telling Ees that they stick their necks out by wearing U badges, violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(threat that Ee should look after his job because he had a family, unlawful, in view of E's statement that U should not get in for betterment of Company)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(remarks that Ees were making big mistake in supporting U and were going to learn hard way, violative)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(threatening trouble to Ees who signed U cards, violative)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E unlawfully threatened Ees with reprisals for engaging in U activities by telling them that, after it made telephone call out-of-town, it would make everybody involved with U disappear)

Lyman Steel Company **249 NLRB No. 040**
(pressing Ee to sign statement that he had received U authorization card from U advocate during working hours, violative, since activity, in anti-U context, suggested E planned reprisals for Ees who supported petitioner)

St. Francis Hospital **249 NLRB No. 017**
(statement that Ee would be punished *to the maximum* if she was ever caught with U materials violative)

Permanent Label Corporation **248 NLRB No. 021**
(threats of discipline directed toward 3 most active U supporters during meeting of supervisors violative where E had contrived, flimsy basis for believing Ees to be supervisors)

International Medication Systems, Ltd. **247 NLRB No. 190**
(remark *What if you get put in jail?* to Ee who had executed affidavits relating to investigation and trial of Bd proceeding, unlawful, where, in context in which it was said, it may reasonably be construed as threat of reprisal for being involved with U)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(suggestion to Ee that he should try to talk Ees out of supporting U and that *last time this happened about the union, you know, the company wouldn't put up with that* constituted threat that company would retaliate against Ees for their U activities)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(statement to Ee that Ees would have to go on strike to get U in at plant, unlawful as threat of reprisal, since statement was not based on objective fact and was obviously injected to raise fears of reprisal)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(unlawful threat of disparate treatment by statement to U adherent that if he were caught sitting or laughing in back room, *you're dead)*

Thermo King Corporation **247 NLRB No. 048**
(supervisor's statement to Ee that he would be cutting his throat if he voted for U, unlawful, since it constituted threat of economic and other reprisals for voting for U)

Peschke Packing Company **JD-(NY)-33-80**
(interrogation of Ee as to why he had filed ULP charges against E and threats to make it rough for him, unlawful)

Giuliem Apparel Corp. **JD-162-80**
(E president's statement to Ee that heads would roll if he found out who was behind U, unlawful)

Garden State Motors Co. **JD-160-80**

E. W. Saybolt

Roadway Express, Inc. **JD-868-79**
(no violation by E's statement that disciplinary action would result from senior Ee's refusal to carry out assignment because of availability of junior men when he was told that assignment was according to past practice and that grievance procedures were available for his protests)

5036-8304 Abolishing striker's jobs

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

Fotomat Corporation **248 NLRB No. 150**

5036-8308 Blacklist

Earl Kuhns d/b/a Frenchy's K

Galax Apparel Corporation **247 NLRB No. 026**

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(informing Ee that if plant closed when U came in, E would have difficulty in getting another job with non-U E, violative)

5036-8310 Denial of reemployment or reinstatement

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

U. S. Oil

5036-8311 Suspension

Weyerhaeuser Company **251 NLRB No. 097**
(comment to Ee in reference to his giving advice to fellow Ee concerning U and wage claim which was coupled with reference to suspended Ee, violative, where it could reasonably be construed as threat of suspension)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**

5036-8311—Cont.

(violation where supervisor informed Ee that she could either talk to him w/o another Ee being present as witness at Ee interview, or consider herself suspended)

5036-8312 Discharge or layoff

Weyerhaeuser Company **251 NLRB No. 097**
(expressing belief that Ee would not *endure* U campaign constituted implied threat of discharge)

Weyerhaeuser Company **251 NLRB No. 097**
(invitation to U adherents to quit or find employment elsewhere constituted implied threat of discharge)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Ford Motor Company **251 NLRB No. 066**
(supervisor's warning that Ees could end up getting fired for pressing their complaints against E's promotional policies, unlawful)

Stafford Construction Co. **250 NLRB No. 128**
(E's statement that if Ees joined or wanted to organize U they would be replaced violative)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(threat to rearrange Ee's work schedule so as to conflict with her personal responsibilities and thus force her to quit her job made in context of conversation about recent discharges and U activities held unlawful threat of discharge if Ee engaged in U activities)

Clark Equipment Company **250 NLRB No. 178**
(telling Ees company was going to get rid of U *pushers*, violative)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(foreman's threatening Ees that E would discharge Ees who voted for U held violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's threat to Ee that if U came in Ee would be first U would let go because she would be absent a lot and U was very strict, unlawful, since E thereby coerced Ee in her U adherence by unsubstantiated charge that U would cause loss of her job if it represented Ees)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(E's statement, in context of conversation in which Ee complained about unfairness of his discharge, that company would rather pay few thousand dollars than see U get in, violative)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(remark that one way to get rid of U or take care of big U vote was to layoff night shift because it was 100 percent behind U, violative)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Sentry Investigation Corp. **249 NLRB No. 130**
(violation of Section 8(a)(1) where E failed to disavow threats of shop steward that if Ees changed bargaining representative they would lose their jobs to members of new representative with more seniority)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(threat of layoff absent objective facts that such adverse consequence of unionization was inevitable violative)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(telling Ees that replacements for their positions had been hired and that E would not sign U contract constitutes threat of discharge)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(threatening economic strikers with job loss for not abandoning strike, unlawful)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(violation, where Ees who were reluntant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

Lyman Steel Company **249 NLRB No. 040**
(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off*, held violative)

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew*, held violative)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(E's statement to Ee, who was demanding minimum pay for Ees and other improvements in terms and conditions of employment, that she should get another job if she did not like the way E was running its business, violative)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where supervisor informed Ees that E's president had said that if Ees voted in U, he would close down and all would be out of job)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation, where E stated during meeting with Ees that certain Ees who were demanding improvement in terms of employment were troublemakers and thereby threatened their job security as undesirable Ees)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(supervisor's statement that *he could hire twenty men to come in there and knock the work out that was in the yard and lay everybody off*, violative, where statement followed unlawful interrogation of Ees as to how they were going to vote in election)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(supervisor's telling Ee that he would *personally* fire her if she had signed certain complaint letter, violative)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(where Ees and supervisors were discharged for participating in writing and distribution of Ees' letter which complained about general manager's operation of E's hotel and suggested manager's discharge, manager's memorandum *to all employees* warning that fate of supervisors would befall Ees if they engaged in similar complaint in future, violative)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E's statement that Ees must become members of illegally recognized U to keep their jobs violated Act)

Baine Service Systems, Inc. **248 NLRB No. 087**
(Ee's would be discharged if they refused to sign checkoff authorization cards in favor of illegally recognized U)

Vogt-Conant Co. **248 NLRB No. 027**
(supervisor's telling Ee that E would get rid of Ee if he did not *shut his mouth* about E's elimination of certain contractual overtime payments, violative)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(forbidding Ee, under threat of termination, from discussing with his fellow Ees contents of meeting with management in which Ee had spoken about or questioned matters of health benefits, pension rights, and wage increases for himself and other Ees, violative)

B. N. Beard Company **248 NLRB No. 016**
(interrogating Ees as to whether they intended to strike, closely followed by threat to discharge them if they did so, unlawful)

Servomation Corporation **248 NLRB No. 014**
(telling Ee not to file a grievance with U over alleged safety matter because it could possibly result in Ee's discharge, unlawful)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(supervisor's telling U supporter in gathering after election, *you're on your way out*, violative, since statement constituted implied threat of discharge)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(prohibiting Ees from talking about the U on production line and threatening them with discharge if they do so, unlawful where talk of U was only restriction on conversation)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(E's statement that he wished to hire new Ees made w/o explanation during period of U activity is veiled threat of discharge as it indicates that E intends to replace some or all existing Ees because of their U activity)

Earl Kuhns d/b/a Frenchy's K

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(statement to proU Ee that if he wanted to come back, he could but that the future of the plant was coming to an end, that since he had good job, E recommended that he not leave it to return to E, held merely realistic warning rather than statement that Ee had no future with E)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(threat to lay off Ees if E did not get open shop proviso in contract or if U representative filed grievance)

The Saloon, Inc. **247 NLRB No. 156**

5036-8312—Cont.

(comment to Ee that she could be replaced, made in context of her reluctance to disavow U and to embrace E's new health care program, unlawful, even though E may have been joking when remark was made)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(threat to discharge part-time Ees under 18, Ees who had signed U cards, and Ees who were just a little late if they supported U or U won, unlawful)

Universal Service Contractors **247 NLRB No. 097**
(threatening striking Ees with discharge if they did not return to work violative)

Tartan Marine Company **247 NLRB No. 073**
(supervisor showing Ee clipping about discharge of individual for not attending U meetings on Sundays, and informing Ee that Ee and other Ees could be laid off before less capable Ees if U came in, unlawful, absent evidence U advocated seniority over capability)

Anco Insulations, Inc. **247 NLRB No. 081**
(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(E's statement to Ee that *if the drivers mess around with a union, we'll all be out of a job,* violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(supervisor's remark that U supporter would be first to go if anything happened, unlawful, in view of supervisor's attempt to get Ee to renounce U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(stating to Ee, in response to her statement of U support, that E's warehouse was full of E's finished product, unlawful, notwithstanding E's attempt to repudiate initial statement, where E's statement was well understood code for economic troubles meaning layoff of Ees and implied that U activity could result in plant closure or layoff)

Keister Coal Company, Inc. **247 NLRB No. 049**

Thermo King Corporation **247 NLRB No. 048**
(baseball poster, displayed by E during election campaign, bearing slogan *You only get one strike and you are out. And that's the way it is with the Union* held not to constitute threat of discharge, since factual representations that when Ees engage in strike they are not receiving pay, and they are walking or out on picket line, are permitted as expressions of free speech)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(soliciting Ee to quit job because of U activity, unlawful)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(telling job applicant that a few Ees would be leaving implying post-election discharge of U adherents, unlawful)

Galax Apparel Corporation **247 NLRB No. 026**

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services **JD-(SF)-225-80**
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

Consumer Enterprises, Inc. **JD-342-80**
(supervisor's statement to Ee that he knew Ee was pushing for U and to be careful because *they could kick you out* held violative)

Magic Mountain Corporation **JD-337-80**
(supervisor's statement that Ee should drop his U activity or else lose his job, unlawful)

Coastal Volkswagen, Audi **JD-(SF)-144-80**

U. S. Oil

Standard Bridge Corporation **JD-174-80**
(threatening Ees with discharge if they did not refrain from seeking membership in U, unlawful)

T.V. Dispatch, Inc. **JD-143-80**
(requiring Ees to apologize for having participated in grievance meeting in order to retain their jobs)

Lika Corporation **JD-(SF)-69-80**
(warning that Mexican nationals would be sent back to Mexico if U came in is implied threat of discharge)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(telling Ees that leader of Ee organizational activities would be terminated *when the time was right,* or w/i 90 days waiting period following U election)

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**
(enforcement denied where ct found that record of proceedings lacked substantial evidence to support conclusions contrary to ALJ; ct rejected argument that E's statements had *tendency in the totality of circumstances to intimidate* Ees or Ees feared that they would lose two hours *show up* pay or be laid off)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(threat of loss of jobs if U came in, violative)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(ct upheld violation where E threatened Ees with discharge if they followed fellow Ee's example of passing out authorization cards)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(threat to discharge Ees who associated with a U adherent, unlawful)

5036-8322 Less favorable treatment

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(general foreman threatening Ees that if they chose U as their representative, E would do away with procedural safeguards in Ee handbook)

5036-8327 Loss of opportunities for advancement

Ford Motor Company **251 NLRB No. 066**
(supervisor's statement to Ees who filed grievances, contemplated civil suits and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to Ee wearing U button that his U activities would have negative effect on his chances for job reassignment constitute threat but not interrogation as to his U sympathies)8328

Oppose employee's unemployment compensation claim

Campo Slacks, Inc. and J

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that U campaign leader would lose his profit sharing benefit on account of unionization of plant, violative)

5036-8329 Loss of benefits

Climate Control Corporation **251 NLRB No. 102**
(posting notice threatening Ees with loss of existing benefits if U were voted in, violative)

Weyerhaeuser Company **251 NLRB No. 097**
(comment that Ees might lose benefits in response to Ee's statement that U Ees would get *so much an hour,* not unlawful, where conversation was related to E's letter to Ees outlining *give-and-take* of bargaining process)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(statement that Ees at plant which had voted for U were being denied benefits that non-unionized Ees were granted violative as threat of reprisals)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(statement that Ees at plant which had voted for U were being denied benefits that non-unionized Ees were granted violative as threat of reprisal)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(statement implying that Ees would lose insurance coverage paid for by E if U were certified, unlawful and interference)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Fotomat Corporation **248 NLRB No. 150**

American Sunroof Corporation; et al. **248 NLRB No. 038**
(threat that Ees would not be eligible for new pension plan if U prevailed, unlawful)

American Sunroof Corporation; et al. **248 NLRB No. 038**

5036-8329—Cont.

(informing Ees that eligibility in pension plan was limited to nonbargaining unit Ees, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(threatening to eliminate pension plan if U came in, unlawful)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(statement to waitress performing nonwaitress tasks that if she were represented by U she could not do this type of work constituted unlawful threat of loss of existing benefit)

J. H. Block

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(E president stating to Ees during pre-election E's *captive-audience meeting* that there would be no Christmas bonus that year, that the funds that would otherwise be used to pay Christmas bonuses would be used to pay his attorney's expenses in opposing U, and that other benefits were to be terminated, violative)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(statements by supervisors that if U came in Ees could lose benefits violative, notwithstanding qualifying words such as *possibility, might or probably* were used as benefits referred to were controlled by E)

5036-8333 Loss of overtime work

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(supervisor's statement, *if you're going to work overtime, you're not to talk U,* held unlawful threat)

5036-8335 Harsher working conditions

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(E's threats to take away Ee breaks unlawful, where made in retaliation against Ees' U organizing activities and Es advanced no legitimate business reasons to justify threats)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(threat that Ees would be on timeclock if U prevailed, unlawful)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that if plant *went U,* he would have to take driver's test, violative)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's statement that if Ee went to a U lawyer, as she claimed she would, that it would be made so hard for her she would have to quit, unlawful, even though E's statement was perceived as a joke by Ee, since statement amounted to threat of reprisal and, in context of E's other ULPs, could not be dismissed as isolated or not being implemented because statement was made in joking manner)

John Skura, William Donofrio and Margaret Dubas t/a Boulevard Associates d/b/a Sheraton Inn **JD-386-80**
(threatening Ee with more stringent inspection of her work in order to establish a reason for her discharge because of her U activities, violative)

Huron Copysette, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**
(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

5036-8338 Rescheduling of working hours

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where during U campaign, E changed start of work week for 3rd shift from Monday to Sunday night as Ees had previously requested violated Act)

5036-8339 Loss of access to management

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not talk to individual Ees but only to shop stewards about grievances, unlawful as threat of more difficult working conditions)

Dick Seidler Enterprises, d/b/a Joe

5036-8341 Withdrawal of privileges

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(E's threats to take away Ee breaks unlawful, where made in retaliation against Ees' U organizing activities and Es advanced no legitimate business reasons to justify threats)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(informing Ees that personal leave for doctor and dental appointments would no longer prevail if U was elected, unlawful)

5036-8343 Denial of vacations benefits

Climate Control Corporation **251 NLRB No. 102**
(threatening Ees with denial of vacation benefits because of U, violative)

5036-8348 No wage increase

I/O Optics Limited, U.S.A. **251 NLRB No. 037**
(exhibiting to group of Ees, paper containing names of Ees scheduled to receive pay raises, unlawful since it amounted to implied threat that continued U activities would result in loss of scheduled pay raises)

St. Francis Hospital **249 NLRB No. 017**
(no raise until U activities cease)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company,* 208 NLRB 431, 432 (1974))

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

Werth Engineering, Inc. **JD-295-80**
(where E had no established practice of granting wage increase its refusal to grant promised raise not violative where because of U activity taking place to grant it would be violative)

5036-8349 Financial loss

Alenco, A Division of Redman Building Products, Inc. **251 NLRB No. 067**
(personnel director's remark that U *was going to have to wind up going to Board to get* requested wage information concerning asserted unilateral reduction in pay rates of certain Ees, and that it could take years not violative, since remark was no more than statement reflecting U's legal right to avail itself of Bd's processes to obtain requested information)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

5036-8350 Reduction in pay

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(threat of lower classifications and thus of lower wages with U, unlawful)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(threat to reduce waitresses' wages if Ees supported U, unlawful)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(threat to reduce all wages to minimum wage if U won election, unlawful)

5036-8354 Reduction in work

Pacific Intermountain Express **250 NLRB No. 180**
(violation where E removed customer accounts from Ee and told other Ees that it had done so because of customer's demand that U sales representatives not service them)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation, where during pre-election period supervisor told Ee that E was *screwing* Ees but it could not be proved, and that Ees' hours would stay cut until U matter was cleared up)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(threatening to cut Ees' hours from 40 to 20 per week because of prospective unionization of warehouse, violative)

Sullivan Transfer Co. **247 NLRB No. 117**
(E's statement to Ee that if he continued to be represented by U it would result in significant reduction in number of hours worked violated Act)

5036-8355 Issuing warnings

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**

5036-8355—Cont.

(warning Ees that if they honored picket line of U representing other Ees at E's plant they would be in violation of no-strike clause and would be charged with unexcused absences, unlawful, since there was no waiver by terms of contract or on basis of bargaining history of Ee's right to engage in sympathy strike or to refuse to cross picket lines of another U)

5036-8358 Refusal to reinstate strikers

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**

(violation where, after Ees went on strike to protest E's ULP, E was accurately quoted in newspaper as having said that Ees hired to replace strikers were permanent and that E planned to replace all strikers; E's comments constituted threats not to reinstate ULP strikers)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**

(violation where E threatened with discharge, and delayed reinstatements of, several Ees who were engaged in ULP strike)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**

(violation where E threatened with discharge, and delayed reinstatements of, several Ees who were engaged in ULP strike)

5036-8359 Refusal to recall laid off employees

Hart Ski Mfg. Co., Inc. **JD-11-80**

(violation, where E's owner, at least indirectly, threatened that laid off Ees would not be recalled until contract offered by E had been accepted by stating he had to have some basic understanding of where Ees were going and whether they would accept management's proposal before company could start calling laid off Ees back to work)

5036-8366 Shut down or removal of plant to new location

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**

(threat to move machinery out of building if it was necessary for everyone to join U, unlawful)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**

(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

Han-Dee Pak, Inc. **249 NLRB No. 107**

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**

(threat immediately before U election of closing plant and moving its production to another plant, violative)

5036-8368 Reorganization of method of doing business

Owen Lee Floor Service, Inc. **250 NLRB No. 070**

(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

5036-8370 Replacement of strikers

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**

(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired later, would be as new Ee held violative, since action interfered with Ees' rights)

Mather Federal Credit Union **JD-(SF)-8-80**

(telling ULP strikers that they were permanently replaced)

5036-8375 Sale of business

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**

(threats to discriminatee and other Ees that it would be discriminatee's fault if E had to sell business and Ees lost their jobs because of discriminate's resort to Bd processes, unlawful)

5036-8379 Shutdown or liquidation of business

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**

(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

(E's threat to close plant if Ees failed in attempt to decertify U, unlawful)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**

(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

Patsy Bee, Inc. **249 NLRB No. 125**

(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Sentry Investigation Corp. **249 NLRB No. 130**

(E's president threatening closure of plant if Ees changed bargaining representative since E could not meet wages and benefits in U's agreements with large companies, unlawful, where he made no reference to availability of collective bargaining since E could not be compelled to agree to terms it could not economically meet)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**

(violation where E's agent, relayed to Ees that E president stated that *he was going to close the place down* if U was voted in)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

(threat to close plant if U representative filed grievance or if E did not get open shop)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

(statement to assembled Ees that E was closing plant amounted to unlawful announcement of economic reprisal for support of U's bargaining position, particularly absent explanation of economic basis for E's decision)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**

(threatening that plant would close down if U's campaign were successful, violative)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(stating to Ee, in response to her statement of U support, that E's warehouse was full of E's finished product, unlawful, notwithstanding E's attempt to repudiate initial statement, where E's statement was well understood code for economic troubles meaning layoff of Ees and implied that U activity could result in plant closure or layoff)

C-F Air Freight, Inc. **247 NLRB No. 060**

(E's statements threatening to close plant, unlawful, where statements conveyed impression that decision to close plant would be made after Ees selected U as representative, E's stated economic reasons as basis of lawful prediction relative to plant closing remarks were spurious, at time statements were made Ees had not even approached U and E was not confronted with contract demands, and continuation of E's facility for over 7 years of financial losses does not support claim that E's statements were merely predictions)

Thermo King Corporation **247 NLRB No. 048**

(E's preelection letter published in monthly newsletter assertedly threatening Ees with plant closure if U won election, not unlawful, where letter did not contain such threat and was merely summary of recent events with concluding comments that until outcome of election was known, it would be difficult for E to project plant production for near future since he did not know what changes would occur with unionization and invited Ees to consider for themselves consequences of unionization)

Thermo King Corporation **247 NLRB No. 048**

(E's speech to Ees in which he assertedly deviated from written speech and made extemporaneous statements threatening Ees with plant closure and loss of jobs if U won election, not unlawful, where Ees' testimony containing discrepancies and showing inability to remember substance of speech, was discredited, and only 2 out of over 500 Ees testified regarding anti-U deviations which at least a few other Ees might also have recalled)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(E's truthful representation to Ee prior to election that E had acquired some machinery from defunct operations which had failed because of economic hardships that had befallen such enterprises due to excessive U bargaining demands held not unlawful threat to close plant and not interference)

Galax Apparel Corporation **247 NLRB No. 026**

Louis Gallet, Inc. **247 NLRB No. 013**

(violation, where E informed Ees in letter prior to election that if Ees selected U as representative E would have to spend time fighting U rather than obtaining orders and remaining competitive in industry, and consequently plant would close, at no point suggesting possibility of collective bargaining)

Neckover Trailer Manufacturing Company **JD-256-80**

(supervisor's statement to Ee that he thought E would close plant if U came in, not unlawful, where statement was in response to Ee's request for his opn on advent of U into plant, and was not coercive nor threatening but constituted everyday dialogue between Ee and supervisor as to pros and cons of unionism)

Lika Corporation **JD-(SF)-69-80**

(warning that all of E's management personnel would quit if U came in, violative as threat that plant would shut down if U came in)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**

(supervisor's stating, in answer to Ee's question as to what would happen if U won election, that *whatever way it goes, we'll all be out of work,* that they would both be out of a job, that *it would all be over with,* or that *whatever way it goes it will all be over with,* held not threat of discharge or plant

5036-8379—Cont.

closure if U won election; at most the statement indicated either that there would be more loss of jobs regardless to outcome of election, or that campaign would be over once election took place)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**
(supervisor's stating on election day that *after today probably everybody will be standing in the unemployment line,* or that *after today probably none of us will be working here any more,* held not threat of plant closure because of Ee U activity; at most, the statement constituted prediction or warning of unemployment w/o regard to outcome of election)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(supervisor's telling Ee, *In fact, E would go out of business if they had a union,* and if *...the union was voted in, that the mill would have to be shut down about a week to have negotiations,* violative, since remarks imply that E would unilaterally choose to close down its plant during negotiations)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(foreman's statement that E would close plant if Ees supported outside U rather than supporting Ee committee and accepting E's contract proposals made to committee and directly to Ees, unlawful, notwithstanding contention statements were casual and that E quickly disavowed them and foreman was demoted, since there was neither plantwide repudiation nor cessation of conduct afterwards)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(it may be assumed that threat of plant closure, though made to only one Ee, will be communicated to others in small unit of Ees)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(E's telling Ees that its restaurant would have to close if it became unionized, violative)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's notices, letters to Ees, and meetings with Ees at non-U plant regarding closing of E's nearby U plant held to convey unlawful implied threats where Ees' understanding of Ee's message was that closing of U plant was result of its unprofitability, that U victory in election at their plant would make it unprofitable leading to same result, and E's arguments regarding leaking of information about closing of plant did not justify its actions)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(threat to close plant because Ees were stabbing E in back by their U activists)

Huron Copysette, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**
(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

5036-8380 Closure of department

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(supervisor's statement that if Ees came in one day and did not have work that they would be sent home for a few days w/o pay, unlawful as threat to Ees that if they supported U there might not be any work and Ees would be laid off w/o pay)

5036-8381 Transfer to another job or shift

Conagra, Inc. **248 NLRB No. 085**
(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat,* unlawful)

5036-8384 Subcontracting

St. Francis Hospital **249 NLRB No. 017**

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(supervisor's statement that if Ees came in one day and did not have work that they would be sent home for a few days w/o pay, unlawful as threat to Ees that if they supported U there might not be any work and Ees would be laid off w/o pay)

5036-8391 Implied or veiled threats

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(threatening Ee with charge of insubordination if she refused to participate in Ee interview w/o another Ee being present as witness, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor's statement to Ee that her daughter was being trained to do work Ee was performing, unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president informing Ee that Ee was on his list of suspected U sympathizers and asserting he would not let any young girls take over and run his business, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor informing black Ee that white Ees were trying to pin responsibility for U effort on her in order to save their own jobs, unlawful)

Custom Coating

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(telling Ee that if he wanted to work only Monday through Friday and not on Saturdays he would have to find employment at U shop held violative as veiled threat that shop would never have U agreement)

Smedberg Machine

Pacific Coast International Meat Co. **248 NLRB No. 183**
(supervisor informing Ee that from now on she would have to do exactly as he ordered, unlawful, where in reprisal for her leadership in lodging C regarding his supervision)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(threat of trouble for mechanics if U got in, because *they evaluate the mechanics* held barely concealed threat of retaliation in form of more stringent evaluations)

C

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(E's statement that he wished to hire new Ees made w/o explanation during period of U activity is veiled threat of discharge as it indicates that E intends to replace some or all existing Ees because of their U activity)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee who was member of U organizing committee if he had heard anything about anyone trying to organize U in plant, and what Ee thought about it, and upon Ee replying he was undecided stating he hoped Ee was not making mistake, unlawful)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(veiled threat that facility would close if organizational drive continued, unlawful)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(statement that if U were voted down things would go on as before held thinly veiled threat that Ees would risk reprisals or detrimental changes if they selected U)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(statement to Ees, who had voiced complaints about paucity of mentioned raise and E's broken promises concerning merit increases, that Ees should get out if they did not like what they were receiving, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(orientation statement including reference to *serious harm* that might befall Ees if they chose U, unlawful, in view of E's other ULPs, history of anti-U activity, and fact statement was primarily read to new Ees by personnel official in his office which was setting conducive to coercion)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(drawing line between prediction and implied threat is often one of great difficulty, and possibility that statement contains implied threat must be viewed from Ees' point of view; for that reason Bd expertise is particularly relevant to determination of whether latent threat lies hidden in E's words, while ct's scope of review is limited to inquiry whether Bd's determination is reasonable and supported by substantial evidence)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's notices, letters to Ees, and meetings with Ees at non-U plant regarding closing of E's nearby U plant held to convey unlawful implied threats where Ees' understanding of Ee's message was that closing of U plant was result of its unprofitability, that U victory in election at their plant would make it unprofitable leading to same result, and E's arguments regarding leaking of information about closing of plant did not justify its actions)

5036-8395 Limitation on or withholding of bonus or pay raise

I/O Optics Limited, U.S.A. **251 NLRB No. 037**
(exhibiting to group of Ees, paper containing names of Ees scheduled to receive pay raises, unlawful since it amounted to implied threat that continued U activities would result in loss of scheduled pay raises)

P. A. Incorporated **248 NLRB No. 077**
(threatening to withdraw announcement wage increases if Ees continued to fight for U, violative)

J. H. Block

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(E president stating to Ees during pre-election E's *captive-audience meeting* that there would be no Christmas bonus that year, that the funds that would otherwise be used to pay Christmas bonuses would be used to pay his attorney's expenses in opposing U, and that other benefits were to be terminated, violative)

5036-8399 Other

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

5036-8399—Cont.

(threatening to discharge replacement Ees if they failed to decertify U, unlawful)

5042 FORMS OF BENEFITS IN CONDITIONS OF EMPLOYMENT, OR PROMISES THEREOF

5042-0100 Generally

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's agreement to *look into* installation of soft drink vending machine, not unlawful, since no definite promise and drinks had previously been available from refrigerator)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(claim that improvements were made during U campaign in order to make benefits consistent with those elsewhere in E's operations is no defense unless benefits are already existing or E had made a final decision to put benefits into effect regardless of U campaign)

5042-0116 Coercive impact of benefits to dissuade employees from unionization

St. Francis Hospital **249 NLRB No. 017**
(working conditions would improve if U lost election)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(raises given to remaining Ees 1 day after unlawful discharges of 4 U supporters violative as given for purpose of discouraging U activity)

5042-0133 Timing

5042-0133-1100 During union organizing period

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected, where U activity was taking place at only small part of E's enterprises)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(during U campaign, offering U sympathizer promotion to dissuade Ees from organizing U, held violative)

Don Pizzolato, Inc. **249 NLRB No. 136**
(paying Ee money owed to him from prior underpayment for job performed not violative where valid debt existed prior to election campaign)

Peavey Company **249 NLRB No. 110**
(E changing policy on day after it learned of organizing campaign to allow Ees to see their personnel files, unlawful)

Peavey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

K

5042-0133-1300 During critical preelection period

Don Pizzolato, Inc. **249 NLRB No. 136**
(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

St. Francis Hospital **249 NLRB No. 017**
(promise of benefits explicitly or implicitly contingent upon election outcome violative)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(granting Ee pay raise w/i day of election for good job performance when she was entitled to it, expected it and requested it, not unlawful)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(announcement and grant of pension plan day before election not violative, where plan was conceived prior to U campaign, completion of plan was not accelerated in response to coming election, and announcement of plan was made in normal course of business)

Connecticut Foundry Company **247 NLRB No. 145**
(increase granted immediately prior to election while Ees were on strike violative)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(wage and meal allowance increases during critical pre-election period, unlawful where granted in response to U campaign)

J. H. Block

Lika Corporation **JD-(SF)-69-80**
(quarterly bonus not violative where consistent with past practice notwithstanding it was given 2 weeks prior to election)

5042-0133-2500 After election while objections or challenges are pending

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(25 cent across-the-board increase given to all Ees shortly after election, not just those who were entitled to it due to raising of statutory minimum wage, violative as reward to Ees for having rejected U and also attempt to influence results if second election were ordered)

5042-0133-5000 Formulated prior to union's request for recognition

Peavey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

5042-0133-8000 Prior to decertification election

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(telling Ees prior to decertification election that if there was no U E could be more lenient with apprentices who failed test, rather than having to comply with procedures dictated by U)

5042-0167 Practice of similar changes

Stanley M. Feil, Inc. **250 NLRB No. 065**
(granting of wage increases, after ULP complaint set for hearing, not unlawful, notwithstanding lack of precise consistency in time between prior increase and fact increases granted because of increase in minimum wage and to compensate for inflation)

Permanent Label Corporation **248 NLRB No. 021**
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

Tartan Marine Company **247 NLRB No. 073**
(granting of wage increases after E learned of U campaign, not unlawful, where E had consistent policy of granting wage increases notwithstanding somewhat larger number of Ees received them than usual for period)

5042-0183 Solicitiation of grievances implied promises benefits by correction

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(E's vice-president asking Ees, during period of U campaign, *what their problems were* and impliedly promising to remedy them held violative)

St. Francis Hospital **249 NLRB No. 017**

Permanent Label Corporation **248 NLRB No. 021**
(E's recitation of *no promises* formula or statement that it was precluded from making commitments, does not cancel inferences that grievances solicited in pre-election context would be corrected)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(violation where E interrogated Ees and remedied identified grievances)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation where, in course of anti-U campaign meeting, E's attorney asked Ees to discuss their grips against E; the attorney was soliciting grievances and E did nothing to rebut presumption that it was promising to remedy such grievances)

CTS Keene, Inc. **247 NLRB No. 141**
(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Houston County Electric Cooperative, Inc. **247 NLRB No. 087**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that conditions could *be improved and corrected* by *pulling together,* thereby implying that rejection of U would result in improvements, coupled with subsequent solicitation and offer to remedy grievances, held unlawful promise of benefits for rejecting U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(violation, where E solicited complaints and grievances and implicitly promised their correction not solely for legitimate business reasons, but rather to convince Ees that grievances could be resolved w/o U)

5042-0183—Cont.

J. H. Block

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(telling Ees that if they did not tell E what was wrong in plant, E could not correct it; and invitation to Ees to discuss their problems, made in context of E's anti-U speech at meeting with Ees, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(solicitation of grievance itself is not coercive, but promise to correct grievance or a concurrent interrogation or polling about U sympathies is unlawful; solicitation of grievances merely raises inference that E is making such a promise)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

Werth Engineering, Inc. **JD-295-80**

Palomar Transport, Inc. **JD-(SF)-158-80**
(solicitation of grievances unlawful, where solicitation was not shown to have been established practice and impliedly held promise of rectification, thereby obviating need for U representation)

5042-3300 Forms of benefits

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(wage increase granted during pendency of R ptn to segment of Ee complement held violative where E failed to overcome *strong presumption of (its) illegality*)

5042-3310 Paid holiday or other holiday arrangements

N.L.R.B. v. Swedish Hospital Medical Center **619 F.2d 33 (C.A. 9, 1980)**
(E's grant of one day vacations to nonstrikers and not to strikers upheld by ct as interference with Ees' right to strike and independent 8(a)(1) violation w/o passing on validity of Bd's findings of 8(a)(3) and (5) violations thereby; ct found grant not so insignificant as not to affect Ees' participation in future strikes and any justification, even if legitimate, would be insufficient to outweight Ees' interest in uninhibited strike activity

5042-3320 Insurance

Stanley M. Feil, Inc. **250 NLRB No. 065**
(insituting hospitalization insurance, unlawful, since for purpose of interferring with U activity where Ees were still wearing U buttons and E referred to fact U campaign was *apparently* over and not to assertion that campaign *was* over)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(institution of medical insurance program planned prior to beginning of U activity and not instituted until 6 months after it began not violative where it was instituted for all unit and nonunit Ees as well as supervisors w/o any mention of U activity)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(granting $20,000 life insurance policies to Ees 7 days before election, unlawful where granting of policies was done in effort to persuade Ees not to support U)

5042-3335 Improvement of plant facility

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's improvement of lighting in its warehouse, not unlawful, where it had been working on improvement prior to onset of U activity)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(construction during U campaign of nursing station providing improved medical treatment at plant, not unlawful, since legitimate business reason existed for improvement where there were no complaints from Ees about lack of nursing station, timing was compatible with construction of other stations in E's operations and corporate-wide concern over Ee health problems, and its impact and relationship with U campaign was minimal)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(timing of announcement and granting of expanded break time and improvements in plant lunchroom facilities, unlawful, where E failed to adequately explain timing of changes in midst of U campaign after receipt of grievances on matters which E solicited unlawfully for purpose of responding to U campaign)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's making improvements in restroom facilities, unlawful where made solely to persuade Ees to vote against U in upcoming election)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of addition of lunch room and plans for improved food service for Ees prior to election, unlawful where calculated to dissuade Ees from voting for U)

5042-3345 Coffee break

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(timing of announcement and granting of expanded break time and improvements in plant lunchroom facilities, unlawful, where E failed to adequately explain timing of changes in midst of U campaign after receipt of grievances on matters which E solicited unlawfully for purpose of responding to U campaign)

5042-3346 Free meals

Don Pizzolato, Inc. **249 NLRB No. 136**
(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

5042-3350 Bonus

O.K. Machine

Carbonex Coal Company **248 NLRB No. 107**
(promise to Ees of tonnage bonus if U was defeated)

Permanent Label Corporation **248 NLRB No. 021**
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

Lika Corporation **JD-(SF)-69-80**
(quarterly bonus not violative where consistent with past practice notwithstanding it was given 2 weeks prior to election)

5042-3365 Sick leave

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(reinstatement of more favorable sick leave policy to induce Ees to with draw support from U constituted interference and violation)

5042-3370 Increased holiday and vacation benefits

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(grant of Ee's claim for holiday pay while stating that Ee was ineligible to receive it and thus effectively bribing Ee to vote against U, unlawful)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(informing Ees at non-U plant that they received 2 more paid holidays than Ees at U plant violative as it indicatedthat Ees who chose U R do not receive any additional benefits than would otherwise be granted to Ees in normal course of E's business)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(informing Ees at non-U plant that they received 2 more paid holidays than Ees at U plant violative as it indicated that Ees who chose U R do not receive any additional benefits than would otherwise be granted to Ees in normal course of E's business)

5042-3375 Elimination of adverse working conditions

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**
(promising and granting improved working conditions to anti-U adherent, unlawful)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of addition of lunch room and plans for improved food service for Ees prior to election, unlawful where calculated to dissuade Ees from voting for U)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of plans to revise plant rules and regulations for Ees during peak of U organizational campaign, unlawful where made solely to dissuade Ees from supporting U)

5042-3378 Elimination of unpopular practices

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where during U campaign, E changed start of work week for 3rd shift from Monday to Sunday night as Ees had previously requested violated Act)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of plans to revise plant rules and regulations for Ees during peak of U organizational campaign, unlawful where made solely to dissuade Ees from supporting U)

5042-3379 Redress of grievances

St. Francis Hospital **249 NLRB No. 017**

5042-3380 Wage increase

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected. where U activity was taking place at only small part of E's enterprises)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(wage increase given U adherent to induce him to refrain from U activities, unlawful)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(granting of wage increases, after ULP complaint set for hearing, not unlawful, notwithstanding lack of precise consistency in time between prior increase and fact increases granted because of increase in minimum wage and to compensate for inflation)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters)8250 NLRB No. 1339(ten-percent wage increase, which was not provided for and not outgrowth of wage survey initiated before U activities began but was granted after U activities began and one week before election, violative and objectionable conduct)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(wage increase granted during critical preelection period, unlawful, where announcement was not made long before U's organizing campaign as claimed by E, and increase was not conferred consistent with past practice but was unprecedented for time of year it was granted)

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(across-the-board wage increase given after U activity began violative where immediately prior to start of U campaign E announced that increase was to be deferred for 3 months)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(25 cent across-the-board increase given to all Ees shortly after election, not just those who were entitled to it due to raising of statutory minimum wage, violative as reward to Ees for having rejected U and also attempt to influence results if second election were ordered)

Lyman Steel Company **249 NLRB No. 040**
(promising Ees wage increase if they withheld their support from Us, held violative)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(granting Ee pay raise w/i day of election for good job performance when she was entitled to it, expected it and requested it, not unlawful)

Connecticut Foundry Company **247 NLRB No. 145**
(increase granted immediately prior to election while Ees were on strike violative)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(announcing and granting wage increase coinciding with U activity violative in absence of evidence that it was granted pursuant to regular pattern or for legitimate business reason)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(raises given to remaining Ees 1 day after unlawful discharges of 4 U supporters violative as given for purpose of discouraging U activity)

Tartan Marine Company **247 NLRB No. 073**
(granting of wage increases after E learned of U campaign, not unlawful, where E had consistent policy of granting wage increases notwithstanding somewhat larger number of Ees received them than usual for period)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**

Keister Coal Company, Inc. **247 NLRB No. 049**
(E's granting inordinately large wage increase in face of U organizing activity held violative when compared to wage increases granted prior to advent of U)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(across-the-board wage increase to influence Ees to vote against U, unlawful)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

Byrne Sand

5042-3390 Increase in working hours

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(promise of full-time employment to part-time Ee during U campaign not violative where Ee had been promised such employment prior to U campaign)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**
(promising Ee extra hours of work if he signed anti-U ptn, unlawful)

5042-3397 Overtime payments

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(payment for performing overtime side work to discourage U support, unlawful)

5042-3399 Miscellaneous benefits

Stanley M. Feil, Inc. **250 NLRB No. 065**
(reinstitution of policy of keeping soft drinks in refrigerator and installation of drink vending machine which was not used by Ees, not unlawful granting of benefits, since minimal difference whether drinks obtained from machine or refrigerator and drinks had been for sale from refrigerator previously)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's agreement to *look into* installation of soft drink vending machine, not unlawful, since no definite promise and drinks had previously been available from refrigerator)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(public announcement for first time, following U initiation campaign, that legal services of company officials was available for Ees' legal problems, unlawful)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Don Pizzolato, Inc. **249 NLRB No. 136**
(paying Ee money owed to him from prior underpayment for job performed not violative where valid debt existed prior to election campaign)

Hedison Manufacturing Company **249 NLRB No. 096**
(granting of week's wages to Ees, 2 weeks before election, for time they were snowbound at E's plant because of great snowstorm, not unlawful, where GC failed to prove that E was attempting to buy election and was not motivated to *do good* because of the emergency; however, granting of benefits w/o consulting U, unlawful, since change in terms and conditions of employment, even for the better, is subject of bargaining)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(announcing, presenting or distributing Ee handbooks for salaried Ees for purpose of disuading Ees from supporting or voting for U, unlawful)

J. H. Block

Coastal Volkswagen, Audi **JD-(SF)-144-80**
(promise to release Ee from responsibility for automobile damage if he would sign contract promising to cease U activity, violative)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(promises of unilateral grant of binding arbitration as final stage of grievance procedure and of *preferred loan* plan immediately before U election, unlawful)

5042-6700 Promises or offers of benefits

5042-6701 Generally

The Dow Chemical Company, Texas Division **250 NLRB No. 102**

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(statement that E had done things in past incorrectly but would correct them in future, implying benefits, unlawful)

5042-6702 Nonspecific promise of benefit

Vantage Petroleum Corp. **247 NLRB No. 202**
(E's inquiry as to whether individuals were interested in employment w/o U representation, not violative, where inquiry merely sought to see whether

5042-6702—Cont.

the individuals were interested in employment at E's stated terms and conditions or were insisting upon package deal)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that conditions could *be improved and corrected* by *pulling together*, thereby implying that rejection of U would result in improvements, coupled with subsequent solicitation and offer to remedy grievances, held unlawful promise of benefits for rejecting U)

C-F Air Freight, Inc. **247 NLRB No. 060**
(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

5042-6703 Implied promises

St. Francis Hospital **249 NLRB No. 017**
(promise of benefits explicitly or implicitly contingent upon election outcome violative)

C-F Air Freight, Inc. **247 NLRB No. 060**
(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**

5042-6710 Improved working conditions

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

Peavey Company **249 NLRB No. 110**
(violation, where E's vice president informed Ee that he had not been aware of bad working conditions that Ees had opened his eyes and he was glad of this and was going to see that things got better, as it is promise of improved working conditions)

Keister Coal Company, Inc. **247 NLRB No. 049**
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

5042-6715 Promotion

Pacific Intermountain Express **250 NLRB No. 180**
(E's telling Ee that many supervisory jobs *were cropping up all the time* while soliciting his help in defeating the U unlawfully implied that Ee could expect a better job if he did not support U)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(offering Ee promotion to dissuade Ees from organizing U, unlawful)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(during U campaign, offering U sympathizer promotion to dissuade Ees from organizing U, held violative)

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(promotion of *housekeeper* who was U adherent to *assistant executive housekeeper* a few days before election and where position of a second assistant executive housekeeper had not existed before, violative, since purpose of promotion was to curtail her U activities)

P. A. Incorporated **248 NLRB No. 077**
(promising Ee promotion and pay raise if he would get out of U, violative)

C-F Air Freight, Inc. **247 NLRB No. 060**
(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

Keister Coal Company, Inc. **247 NLRB No. 049**
(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

5042-6720 Job protection

Catalina Yachts **250 NLRB No. 048**
(promise that if E voted for E, it would see that he got his job back should he run afoul of immigration authorities)

5042-6742 Premium pay plan

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(implied promise of piecework as incentive method of payment to increase earnings during pre-election period, unlawful)

5042-6745 Pension plan

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where supervisor told Ees, in context of discussion about disadvantages of U, that E was *working on a retirement plan*)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(announcement and grant of pension plan day before election not violative, where plan was conceived prior to U campaign, completion of plan was not accelerated in response to coming election, and announcement of plan was made in normal course of business)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(announcement of pension plan, contemplated since 2 months before start of U organizing campaign but announced after campaign had begun, unlawful, in absence of proof justifying E's reference to introduction of plan as part of its preelection campaign)

5042-6750 Insurance benefits

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice announcing that E intended to improve existing insurance program, posted during U organizing compaign, not unlawful, where notice stated that new plan was to be effective companywide; unlike other benefits found to be violations, insurance plan was not subject of discussions during meetings or solicitation of grievances; no election was scheduled or even petitioned for; and there was no indication that there would be any better time for announcing companywide improvement)

Lika Corporation **JD-(SF)-69-80**
(statement that E had been working for months to get Ees health insurance not violative as no defenite statement as to when Ees would get insurance was made and E had been looking into insurance prior to advent of U campaign)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(promise to look into dental insurance program immediately before U election, unlawful)

5042-6765 Party

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's promise of victory celebration after election, not unlawful, since such remarks did not reveal promise of significant benefit that would have had more than minimal impact upon Ees' exercise of Section 7 rights)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(violation where E offered Ees free Christmas party in order to disuade them from activities on behalf of U)

5042-6770 Retirement fund

Neely's Car Clinic **249 NLRB No. 080**
(promise of specific type of retirement plan if Ees did not belong to U, violative)

5042-6775 Bonus

P. A. Incorporated **248 NLRB No. 077**
(promising to give Ees bonuses if plant were non-U, violative)

Keister Coal Company, Inc. **247 NLRB No. 049**
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(promise of plant-wide bonus systems immediately before U election, unlawful)

5042-6779 Tuition payment

Lika Corporation **JD-(SF)-69-80**

5042-6780 Wage increase

Century Moving

Patsy Bee, Inc. **249 NLRB No. 125**

5042-6780—Cont.

(no violation by denial of alleged scheduled wage increase where evidence did not establish existence of either authorizative promise of wage increases to specific Ees at specific times or failure to abide by established practice; inference that some Ees were frustrated insufficient to establish U-related improper motivation)

Peavey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(E's granting of wage increases shortly after U's second filing of R petn, not unlawful, notwithstanding E's previous ULPs including unlawful layoff and financial losses where increase decided on and announced to Ees prior to knowledge of renewed U activity and antedated second ptn by almost two months coinciding with improvement of E's financial condition)

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(promise of 15-cent wage increase every 6 months if their bargaining representative agreed to open shop proviso, unlawful)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(E's sending Ees letter advising them of wage increase and enclosing a $10 bill in order to dissuade them from activities on behalf of U, violative)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(E's preelection promise to grant pay raises or implying that they possibly would be given after election, unlawful, where E's conduct tended to impress upon Ees that they did not need U to receive pay raise, and statement that wages, which might be granted later on, could not be considered while election was pending, had foreseeable effect of placing onus for such delay on U)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(E informing Ee on advice of counsel he could not give Ee wage increase in view of U activity, not unlawful, since recission was correction of error in offering unlawful increase)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(no unlawful promise of benefit where E asked Ee who had informed E she would look for new job if she wasn't granted needed wage increase to not leave w/o giving E opportunity to make offer, and where E subsequently informed Ee requested raise was too high and did not make counter offer)

5042-6785 Loans

Lika Corporation **JD-(SF)-69-80**

5042-6787 Paid holiday

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

5042-6788 Vacations

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

Alumbaugh Coal Corporation **247 NLRB No. 112**

5042-6795 Plant improvements

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(announcement of proposed new parking lot made during U campaign, unlawful, where E failed to establish legitimate business reason for announcement and, although new parking lot had been finally decided upon, nothing was done until parking lot problem was brought to E's attention in unlawful grievance solicitation meetings)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(promise of additional and improved parking facilities, unlawful where made solely to persuade employees to abandon U and to vote against U in upcoming election)

5042-6798 Redress of grievances

United States Steel Corporation **250 NLRB No. 059**
(E agreeing to post job only on condition that grievance protesting failure to post job be withdrawn, unlawful; particularly where job was subsequently posted w/o withdrawing of grievance after firing of grievance committeeman)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(violation where E interrogated Ees and remedied identified grievances)

Houston County Electric Cooperative, Inc. **247 NLRB No. 087**
(asking Ee during U campaign *what the problems were*, unlawful, absent any previous policy of periodically soliciting grievances; *such activity ... occuring in midst of U campaign inherently constitutes implied promise to remedy grievances and violates Section 8(a)(1)*)

5042-6799 Other promises

Alfa Leisure, Inc. **251 NLRB No. 088**
(promising Ee letter guaranteeing job for Ee's brother in order for brother to be eligible for parole if Ee withdrew charges pending before Bd, violative)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(telling Ees prior to decertification election that if there was no U E could be more lenient with apprentices who failed test, rather than having to comply with procedures dictated by U)

Peavey Company **249 NLRB No. 110**
(E changing policy on day after it learned of organizing campaign to allow Ees to see their personnel files, unlawful)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where Ee had accumulated enough points for lateness warning under E's disciplinary system and supervisor offered to try to help Ee out she violated Act where offer of benefit was based on Ee's professed opposition to U)

5042-8500 Offer of money

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(E's sending Ees letter advising them of wage increase and enclosing a $10 bill in order to dissuade them from activities on behalf of U, violative)

5045 EMPLOYER-SPONSORED MEETINGS WITH EMPLOYEES

St. Francis Hospital **249 NLRB No. 017**
(holding meetings so that Ees could air their grievances during U campaign and holding election to select representative to meet with management)

Werth Engineering, Inc. **JD-295-80**

5048 EMPLOYER-SPONSORED POLLS, ELECTIONS, ETC.

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(polling Ees as to how they were going to vote and revealing results in way Ees could reasonably be expected to hear them, unlawful)

5048-0100 Generally

5048-0160 Safeguards for polls to ascertain majority in respect to request to recognize

5048-0160-3300 Purpose communicated to employees

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

The Workshop, Inc. **JD-230-80**
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

5048-0160-5000 Assurances against reprisal given

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

The Workshop, Inc. **JD-230-80**
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

5048-0160-6700 Poll by secret ballot

The Workshop, Inc. **JD-230-80**
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

5048-0180 Unlawful in light of other circumstances

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(questioning of Ees about U activities and their desires for representation by highest ranking member of management, with no valid purpose communicated to Ees, prefaced by expressions of hostility to U accompanied by other violative conduct violates Act)

5048-3300 Method employed

5048-3360 Polling or surveying employees

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(coercively polling Ees concerning their U sympathies and activities, unlawful)

5048-5000 Objective basis for doubting union's majority

The Workshop, Inc. **JD-230-80**
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

5051 ACTIONS BASED UPON RACIAL OR OTHER MINORITY GROUP CONSIDERATIONS

5051-6700 Forms of actions

5051-6733 Promotion

Honeywell, Inc. **250 NLRB No. 019**
(suspension of Ee who wrote statements on E's wall accusing supervisors of racial discrimination, unlawful, where discipline for public airing of his greivance concerning discrimination rather than pursuant to rule against defacing property)

5054 AVOIDANCE OR ABANDONMENT OF RESORT TO ACT URGED OR REQUIRED BY EMPLOYER

5054-0600 Conditioning benefits or discipline on employees not appealing to government agencies

Universal Service Contractors **247 NLRB No. 097**
(asking Ee to withdraw his compensation claims against it which had been filed with State not violative, where E had properly paid Ee, there was no evidence of discrimination against Ee and E explained to Ee that all Ees in his situation were paid same wage)

5054-6300 Conditioning continued employment on refraining from engaging in union activities

Comgeneral Corporation **251 NLRB No. 069**

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(supervisor threatening Ees with discharge if they did not keep out of U, or if they did not bring to her U material received in mail, unlawful)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services **JD-(SF)-225-80**
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

5054-6500 Conditioning employment on promise not to engage in protected activities

T.V. Dispatch, Inc. **JD-143-80**
(requiring Ees to apologize for having participated in grievance meeting in order to retain their jobs)

5054-7500 Conditioning employment on withdrawal of charges

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president's offer to U adherent at time of her discharge that he would permit her to return to work if she would abandon her support for U effort and refrain from filing ULP charge, violative)

5060 AVOIDANCE OR REPUDIATION OF UNION URGED OR REQUIRED BY EMPLOYER

5060-0800 Inducing abandonment of strike

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

The Royal General Company **JD-17-80**
(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

5060-2500 Assistance in effecting resignation

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequently encouraging and assisting Ees to withdraw from Teamsters local, violative)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequently encouraging and assisting Ees to withdraw from Teamsters local, violative)

5060-3300 Inducing abandonment of union by granting benefits or making concessions

Stanley M. Feil, Inc. **250 NLRB No. 065**
(insituting hospitalization insurance, unlawful, since for purpose of interferring with U activity where Ees were still wearing U buttons and E referred to fact U campaign was *apparently* over and not to assertion that campaign *was* over)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(E's suggestion that U ptn be withdrawn in exchange for his agreeing to consider Ees demands violative)

5060-3350 Offer of concessions

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(offering Ees benefits if they negotiate directly with E and withdraw support from U violative)

5060-4100 Benefits conditioned on abandonment of union

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(offering Ee promotion to dissuade Ees from organizing U, unlawful)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(E's suggestion that U ptn be withdrawn in exchange for his agreeing to consider Ees demands violative)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Cable Vision, Inc. **249 NLRB No. 062**
(conditioning benefits on abandonment of U, unlawful)

Lyman Steel Company **249 NLRB No. 040**
(promising Ees wage increase if they withheld their support from Us, held violative)

St. Francis Hospital **249 NLRB No. 017**
(working conditions would improve if U lost election)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**
(promising Ee extra hours of work if he signed anti-U ptn, unlawful)

Keister Coal Company, Inc. **247 NLRB No. 049**
(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

Keister Coal Company, Inc. **247 NLRB No. 049**
(E's granting inordinately large wage increase in face of U organizing activity held violative when compared to wage increases granted prior to advent of U)

Keister Coal Company, Inc. **247 NLRB No. 049**
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

The Royal General Company **JD-17-80**
(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

5060-5000 Reemployment conditioned on abandonment of union

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(solicitation of unlawfully discharged Ee to ask for his job back and tell other Ees that U was no good held unlawful solicitation to engage in antiU activity and conditioning of reemployment on acceptance of unlawful request)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president's offer to U adherent at time of her discharge that he would permit her to return to work if she would abandon her support for U effort and refrain from filing ULP charge, violative)

5060-5000—Cont.

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

5060-5200 Employment conditioned on applicant's lack of union sentiments

Stafford Construction Co. **250 NLRB No. 128**
(telling prospective Ees that employment was conditioned on withdrawal from U)

5060-6300 Direct solicitation of grievances

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(violation where E solicited Ee grievances in order to dissuade Ees from supporting U)

Burgess Mining

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where before election E directly solicited grievancesto solve the *problem* and issued questionnaire to Ees about supervision andE's policy and, while objections were pending, service director suggested and encouraged and supervisor renewed and offered to help effectuate Ees' election of representatives to present their grievances to E)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where before election E directly solicited grievances to solve the *problem* and issued questionnarie to Ees about supervision and E's policy and, while objections were pending, service director suggested and encouraged and supervisor renewed and offered to help effectuate Ees' election of representatives to present their grievances to E)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(solicitating grievances at Ee meetings and promising to correct them, violative)

Patsy Bee, Inc. **249 NLRB No. 125**

Kantor Pepsi-Cola Bottling Co. of Beloit, Wisconsin **248 NLRB No. 012**
(solicitation of grievances from Ee and promise of benefits, unlawful, notwithstanding E's asserted reasons for promising benefits; Bd found that E's unexpressed thoughts or belief that *good things* might be in the offing because of potential merger with another E had no bearing on issue of whether his expressed statements had tendency to interfere)

CTS Keene, Inc. **247 NLRB No. 141**
(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

Alumbaugh Coal Corporation **247 NLRB No. 112**

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor meeting with Ees as group and explaining why E could not afford dental insurance and discussing E's improved health benefits, unlawful, where meeting was merely extension of unlawful survey E conducted earlier to solicit grievances and undermine U)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(plant manager's solicitation of grievances and his promises to resolve them, unlawful where they were attempt to persuade Ees to abandon U)

Interplastic Corporation **JD-74-80**

Union Carbide Corporation **JD-(SF)-13-80**

5060-6900 Solicitation of expression of opposition to union

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

Union Carbide Corporation **JD-(SF)-13-80**
(E's urging two Ees to talk to *the other guys* about the U situation, unlawful)

5060-7500 Solicitation of repudiation of union

Weyerhaeuser Company **251 NLRB No. 097**
(soliciting Ee who was considered leader of minority Ees to talk *his people* out of supporting U, violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(soliciting Ee not to be U adherent because of E's past and perhaps future generous leave policy)

The Davis Company **249 NLRB No. 068**
(supervisors' contacting individually those Ees thought most susceptible to pressure and advising them of their right to revoke dues-checkoff authorizations held, in context of other ULPs designed to discourage U support, not merely advising Ees of their rights but was unlawfully soliciting them to withdraw from U and revoke checkoff authorizations)

Cable Vision, Inc. **249 NLRB No. 062**
(solicitation of Ee to abandon U, unlawful)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(solicitation of Ees' signatures on ptn repudiating U, unlawful; E's Ees who signed ptn did so in presence of notary public who witnessed their signatures)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(supervisor's stating to U supporter that he did not want any part of U and wished he could change Ee's mind, and that he expected Ee to do his job and expected no trouble from him, not unlawful)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequently encouraging and assisting Ees to withdraw from Teamsters local, violative)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequently encouraging and assisting Ees to withdraw from Teamsters local, violative)

5060-7550 Decertification petition

Ledford Construction Company, Inc. **251 NLRB No. 193**
(circulating decertification ptn in presence of E's president gave rise to inference that E supported ptn)

Campo Slacks, Inc. and J

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E suggested to member of U negotiating committee that the Ees wait and file decertification ptn and then form their own Ee committee to bargain with E)

5060-8700 Solicitation of revocation of dues checkoff authorizations

The Davis Company **249 NLRB No. 068**
(supervisors' contacting individually those Ees thought most susceptible to pressure and advising them of their right to revoke dues-checkoff authorizations held, in context of other ULPs designed to discourage U support, not merely advising Ees of their rights but was unlawfully soliciting them to withdraw from U and revoke checkoff authorizations)

5060-8900 Solicitation of employee grievance or bargaining committee

Weyerhaeuser Company **251 NLRB No. 097**

5060-8900—Cont.

(remarks calculated to encourage formation or use of Ees committee to deal with Ee problems as alternative to U, violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E suggested to member of U negotiating committee that the Ees wait and file decertification ptn and then form their own Ee committee to bargain with E)

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1979)**
(suggestion to Ee to form in-house committee, violative, where made in effort to undermine U's organizational campaign)

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1980)**
(suggestion to Ee to form in-house committee, violative, where made in effort to undermine U's organizational campaign)

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1980)**
(suggestion to Ee to form in-house committee, violative, where made in effort to undermine U's organizational campaign)

5060-9100 Solicitation of withdrawal of union designation cards

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(statement to Ee not to sign paper for U and that E was going to get a lawyer to take papers back, unlawful, since Ee was thereby coerced not to sign U card with threat of legal action if he did)

Alumbaugh Coal Corporation **247 NLRB No. 112**

Tartan Marine Company **247 NLRB No. 073**
(E's posting notice informing Ees they *had an absolute and moral right to cancel their U cards and have them returned* and that if they desired to get their cards back, they should write letter to U with a copy to Bd asking that their cards be cancelled and returned to them and providing Us and Bd's addresses, not unlawful, where Ees had requested information; however, supervisor calling Ee's attention to notice, after Ee expressd desire to attend company meetings, violative)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

5062 REFUSAL TO RECOGNIZE AND/OR BARGAIN

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter ego's refusal to bargain with certified U violative)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(E engaging through its representatives in dilatory and surface bargaining, utilizing neogitators who did not have authority to consummate agreement w/o approval of E's president, and E's president failure to agree to terms and conditions negotiated by E's representative with U, violative)

C

5066 GOING OVER HEADS OF REPRESENTATIVES

5066-1400 Changes in terms of employment made unilaterally or by negotiations with co-union

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

5066-1460 Unilateral withdrawal of concessions

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

5066-1480 Wage increases

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

5066-5600 Direct appeal to strikers

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

5066-6300 Denying plant access to union

Campo Slacks, Inc. and J

5066-7000 Undermining authority of representatives

5066-7025 Bargaining directly with employees

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(offering Ees benefits if they negotiate directly with E and withdraw support from U violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E bypassing Ee committee and presenting contract proposals directly to Ees and asking Ees to accept or reject proposals and upon rejection presenting second proposal directly to Ees)

5066-7037 Solicitation and inducement of employees to accept offer

Top Manufacturing Company, Inc. **249 NLRB No. 055**
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

5066-7075 Interference with grievance settlement

Top Manufacturing Company, Inc. **249 NLRB No. 055**
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

5072 INTERFERENCE WITH UNION OR COLLECTIVE ACTIVITIES

5072-0200 Interference with access to union

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(prohibiting Ees from entering into work room of U activist held violative)

Tri-State Carpenters

Standard Bridge Corporation **JD-174-80**
(ordering Ees to secret themselves from U's business representative at E's jobsite to prevent Ees' attempts to become U members or to engage in U activities which did not interfere with their job duties, unlawful)

5072-0400 Ordering union representative out of plant

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

5072-1200 Requesting wage increases

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

5072-1300 Refusing to hire applicants because of prior union adherence or activity

Ahstabula Forge, A Division of ABS Industries, Inc. **JD-388-80**
(industrial relations manager informing Ee that he would not have been hired if E had known he was son of U president, unlawful)

Monongahela Steel Corporation **JD-392-80**
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

5072-1500 Solicitation of opposition to union

Amber Delivery Service, Inc. **250 NLRB No. 016**
(soliciting Ees to influence other drivers to support E rather than U)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president informing Ee she did not have to sign U card if she did not want, unlawful)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(telling Ees not to attend U meetings, encourage U representation, or sign U cards, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

5072-1500—Cont.

Tartan Marine Company **247 NLRB No. 073**
(supervisor requesting that Ee inform other Ees about bad points of unionization especially seniority policy which E alleged could adversely effect Ees)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

Galax Apparel Corporation **247 NLRB No. 026**
(directing Ees to discourage other Ees from supporting U, violative)

Mather Federal Credit Union **JD-(SF)-8-80**

5072-1600 Solicitation of revocation of authorization cards

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

5072-1700 Solicitation of revocation of dues checkoff authorizations

The Davis Company **249 NLRB No. 068**
(under circumstances herein, assistance to Ees in withdrawing their dues checkoff authorizations, unlawful)

5072-1900 Use of polygraph test

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

5072-2000 Prohibiting employees' discussion about wages

Koch Supplies, Inc. **249 NLRB No. 160**
(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and was thus not aimed at solving personal problem but included welfare of others)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(rule prohibiting Ees from discussing E's wage schedule with outsiders, unlawful; E's contention public knowledge of wage rates would assist competitors, rejected, where E in mounting its annual wage survey gave out its own data to competitors)

5072-2400 Interference with employee's right to representation during meetings with employer

General Motors Corporation **251 NLRB No. 121**
(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(denying Ee presence of U steward at meeting between E and Ee not violative where sole purpose of meeting was to inform Ee of her discharge as *Weingarten* does not apply to meetings held for such purposes)

Illinois Bell Telephone Company **251 NLRB No. 128**
(Ee entitled to have any Ee present with her at disciplinary meeting with E and E's refusal to allow anyone but Ee with official U status be present, violative)

Amoco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

Kraft Foods, Inc. **251 NLRB No. 006**
(effectively depriving Ee, who was involved in forklift accident and fight with another Ee, of his right to U representation at investigatory interview which Ee reasonably believed might result in disciplinary action unless U representative was present, violative)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E who insisted that U steward remain silent during investigatory interview violated Act as mere presence of steward while Ee was being interrogated about alleged theft of company property is insufficient to alter inbalance which SCt sought to allevaiate in its *Weingarten* decision)

Texaco, Inc. **251 NLRB No. 063**
(E who required U representative to remain silent during meeting with Ee held solely for purpose of informing him of 3-day suspension did not violate Act as E is not statutorily obligated to furnish representation at such interview and thus fact that representative was required to remain silent irrelevant)

Texaco, Inc. **251 NLRB No. 063**
(E who instructed U representative that he must remain silent during interview of Ee relating to his possible misconduct on job violated Act as *Weingarten* right to representation includes not only presence of representative but also active assistance where confrontation threatens Ee's job security)

Roadway Express, Inc. **251 NLRB No. 138**
(supervisor's refusing Ee's request for U representation during interview regarding Ee's suspension for violating E's rule concerning coffee breaks while driving truck held violative, since interview was disciplinary rather than investigative; disciplinary action had to be taken if violation of E's rule had in fact occurred)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **251 NLRB No. 122**
(no violation of Ee's right to have representative at interviews with E concerning Ee's suspension and then discharge for excessive tardiness where purpose of interviews was to announce and implement previously determined disciplinary action; E had decided respectively to suspend and to discharge Ee before meetings, on basis of facts which it had obtained w/o talking to Ee; see *Baton Rouge Water Works* 246 NLRB No. 161 (1979))

United Telephone Company of Florida **251 NLRB No. 101**
(*test for determining whether Ee reasonably believes interview might reasonably result in disciplinary action is measured by objective standards under all circumstances of the case rather than by Ees subjective motivations)*

United Telephone Company of Florida **251 NLRB No. 101**
(suspension of Ee for refusing to further participate in interview, not violative, since Ee had no reasonable grounds for believing interview would result in disciplinary action where interview was pursuant to counseling procedures, the non-disciplinary nature of which Ee was aware, and Ee did not request U representation at outset of interview)

United States Postal Service **251 NLRB No. 033**
(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

Hotel St. Moritz, Inc. **251 NLRB No. 015**
(no violation by E's questioning delegate status of former elected U delegate who appeared at E's meeting with another Ee at latter's request, since E's questioning was not in bad faith where the testimony of many witnesses showed considerable confusion as to whether former delegate retained his status)

Burgess Mining

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(threatening Ee with charge of insubordination if she refused to participate in Ee interview w/o another Ee being present as witness, violative)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(right to representation even though only fellow Ee and even though U not yet certified or certification being challenged)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(requiring Ee to participate in Ee interview w/o representation, violative where Ee, who reasonably anticipated disciplinary action, had asked that another Ee be permitted to attend the meeting with her to act as witness)

Sentry Investigation Corp. **249 NLRB No. 130**
(*Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics*)

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**
(announcement of *final decision* to discharge probationary Ee did not entitle him to *Weingarten* rights)

Kohl's Food Company **249 NLRB No. 013**
(no violation where although Ee reasonably feared that interview with personnel director might result in disciplinary action, she did not ask that U representative be present)

Levingston Shipbuilding Company **249 NLRB No. 001**
(E's investigatory interview of Ee w/o affording Ee representation held not unlawful, since Ee's statements regarding representation referred to legal representation by a lawyer in ct, and were not a request for representation at the interview itself)

First National Supermarkets, Inc. d/b/a Pick-N-Pay Supermarkets, Inc. **247 NLRB No. 162**
(where Ee did not request U representation at disciplinary meeting no *Weingarten* violation exists; moreover, fact that discipline was justified is not determinative)

Texaco Inc. **247 NLRB No. 056**
(E's denying Ee's request for U representation at his disciplinary interview, not violative, since sole purpose of the interview was to inform Ee of disciplinary action, and of final decision to impose discipline which had been reached prior to interview and was based upon facts and evidence which E

5072-2400—Cont.

had obtained prior to the interview; See *Baton Rouge Water Works Co., 246 NLRB No. 161*)

Peschke Packing Company **JD-(NY)-33-80**
(violation where on two occasions E proceeded to interview Ee after ignoring latter's request for U representation made by Ee in reasonable belief that he was to be disciplined; no violation, however, where when Ee requested U steward's presence, E terminated interview, then recalled Ee after 5 minutes and informed him of discipline to be imposed)

United States Postal Service (Las Vegas, Nevada) **JD-(SF)-214-80**
(violation where E issued warning to Ee because he refused to participate in interview concerning blank spaces on his timecard w/o a representative)

Wolverine World Wide, Inc. **JD-185-80**
(Ee's rights were not violated where she was denied presence of Ee representative at interview with E as sole purpose was to inform her that decision had already been made to discharge her; See *Baton Rouge* 246 NLRB No. 161)

Wolverine World Wide, Inc. **JD-185-80**
(discipline and ultimate discharge of Ee for her refusal to leave her work station w/o being accompanied by Ee representative to attend meeting with supervisor which she believed could result in imposition of discipline not violative for Ee has no protected right to refuse to go to office and can be lawfully disciplined for such refusal; See *Roadway Express* 246 NLRB No. 180 overruling *Glomac Plastics* 234 NLRB 1309)

Roadway Express, Inc. **JD-868-79**
(no violation by refusal to allow Ee to have U steward present at interview which he reasonably feared might result in his being disciplined where E only summoned Ee to office to inform him that he was *getting a letter* but did not question him or engage in a dialogue or interchange)

Vulcan Fuel Corporation **JD-842-79**
(once E is put on notice of invocation of *Weingarten* protections, if E expressly assures Ee that no discipline will result, and no discipline in fact occurs, E is under no obligation to furnish representation)

Vulcan Fuel Corporation **JD-842-79**
(denial of Ee's request for U representation at interview in which Ee reasonably feared imposition of discipline, violative, eventhough no disciplinary action was taken against Ee at interview; if steward is absent, E must accept some delay in disciplinary process)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation where personnel manager required Ee to participate in absence-counseling interview w/o U representation, since personnel manager had authority to approve absence and unapproved absence could result in discipline)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(*Weingarten* protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill *Weingarten* functions than is another Ee)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**
(requiring two Ees to attend investigatory interviews w/o presence of their U steward, violative; one Ee had requested supervisor to have shop steward accompany her to interview, and the other had called for the steward who responded to her call but was ordered back to work by plant manager)

5072-2500 Sponsorship of inside union

Carbonex Coal Company **248 NLRB No. 107**
(E solicitation of Ee to talk to fellow Ees about forming *company U* violative)

5072-2600 Interference with employees' right to selection own representative

General Thermo, Inc. **250 NLRB No. 158**
(threat that organizers of U could be fired, unlawful)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Lyman Steel Company **249 NLRB No. 040**
(blanket prohibition against any conversations in plant between Ees who supported disfavored U of E)

Lyman Steel Company **249 NLRB No. 040**
(pressing Ee to sign statement that he had received U authorization card from U advocate during working hours, violative, since activity, in anti-U context, suggested E planned reprisals for Ees who supported petitioner)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E who generally permitted Ees to talk while at work violated Act where on eve of election it prohibited pro-U Ee from talking to other Ees)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(permitting distribution of anti-U pamphlet among Ees during company time, violative, since pamphlet ratified implied threats of closure, loss of jobs and privileges)

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(forbidding Ee from seeking U assistance in his drive for improvement of wages, pensions, and health benefits, violative)

Permanent Label Corporation **248 NLRB No. 021**
(E who asks Ees to tell other Ees to vote against U violates Act)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services **JD-(SF)-225-80**
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(calling suspected U adherent derogatory names prior to election, violative, since action discouraged Ee participation in U activities)

Standard Bridge Corporation **JD-174-80**
(accusing Ee of stirring up trouble by his attempts to obtain U membership and thus causing his own termination and other Ees' transfer, violative)

5072-2700 Interference with employee's performance of duties as union representative

Alfa Leisure, Inc. **251 NLRB No. 088**
(discharge of Ee for rude conduct violative where conduct occurred in collective-bargaining setting and in fact occurred while Ee was a U representative and was present solely for purpose of bargaining)

Hotel St. Moritz, Inc. **251 NLRB No. 015**
(no violation by E's questioning delegate status of former elected U delegate who appeared at E's meeting with another Ee at latter's request, since E's questioning was not in bad faith where the testimony of many witnesses showed considerable confusion as to whether former delegate retained his status)

Swift and Company **250 NLRB No. 152**
(supervisor's telling steward that fellow steward was *skating on thin ice* and *wouldn't last long* because she had filed grievance against supervisor held violative)

United States Postal Service **250 NLRB No. 156**
(threatening U steward during grievance presentation with disciplinary action if he didn't shut up, unlawful)

5072-2700—Cont.

United States Postal Service **250 NLRB No. 156**
(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

L. R. Bob Spillers Painting Co. **JD-(SF)-169-80**
(E's attempt to have U business agent remove Ee as U steward not violative where request averted to U representative who had authority to appoint stewards, no Ees were present and no threats were given)

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's statement to U steward to the effect that if he performed his steward's duties with zeal considered excessive by supervisor, supervisor would make steward's job unpleasant and cause his eventual severance, unlawful)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation where E threatened U steward with possible discipline if he insisted on providing assistance to Ee during absence-counseling session, an investigatory interview)

5072-3000 Soliciting employees to cross picket line

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(threatening non-unit Ees with loss of jobs if they refused to cross picket line, violative)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(violation, where applicant was informed Ees had elected to go U, that there might be strike, and asked whether she would cross picket line)

5072-3300 Interference with testimony of Board witnesses

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

The Nestle Company **248 NLRB No. 106**
(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

5072-3900 Interference with handbilling

Lika Corporation **JD-(SF)-69-80**
(removing U leaflets from automobiles in E-parking lot and throwing them away)

5072-4000 Solicitation of statements from employees

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(threatening Ees if they did not sign document which favored E by stating that Ee was satisfied with E's working conditions and did not want U, unlawful)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(solicitation of unlawfully discharged Ee to ask for his job back and tell other Ees that U was no good held unlawful solicitation to engage in antiU activity and conditioning of reemployment on acceptance of unlawful request)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(E preparing and circulating among Ees ptn for purpose of defense in ULP proceeding stating that there had been no changes in rules and regulations at E, unlawful, where E failed to meet requirements for negating coercive effect)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

5072-5500 Right to file grievances

Ford Motor Company **251 NLRB No. 066**
(supervisor's statement to Ees who filed grievances, contemplated civil suits and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

United States Postal Service **251 NLRB No. 033**
(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

Swift and Company **250 NLRB No. 152**
(supervisor's telling steward that fellow steward was *skating on thin ice* and *wouldn't last long* because she had filed grievance against supervisor held violative)

Campo Slacks, Inc. and J

United States Steel Corporation **250 NLRB No. 059**
(E agreeing to post job only on condition that grievance protesting failure to post job be withdrawn, unlawful; particularly where job was subsequently posted w/o withdrawing of grievance after firing of grievance committeeman)

Trojan Transportation, Inc. **249 NLRB No. 084**
(discharge of Ees as reprisal for contractual grievance activities, unlawful)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors,* unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Servomation Corporation **248 NLRB No. 014**
(telling Ee not to file a grievance with U over alleged safety matter because it could possibly result in Ee's discharge, unlawful)

Lane Trenching, Inc. **247 NLRB No. 183**
(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

St. Regis Paper Company **247 NLRB No. 105**
(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(discharge of Ee because she solicited Ees to see individual she considered to be *boss* rather going through regular channels regarding their complaints held violative, since Ee's conduct was protected activity and was not so flagrantly in derogation of E's *chain of command* or managerial authority as to loose protection of the Act notwithstanding *boss* had severed all official connections with E long before incident since subsequent conduct led Ee to believe he still exerted authority)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

5072-5600 Disciplining employee for conduct during grievance meeting

United States Postal Service **250 NLRB No. 156**
(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors,* unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

5072-5800 Interference with representation on grievance committee

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(statement by E that U steward was troublemaker and E was having problems in department which could reasonably be interpreted by U officials to mean that E's problem was overzealous steward who filed too many grievances and solution to problem was transfer of steward, unlawful)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

5072-6300 Interference with employees' free access to Board

Alfa Leisure, Inc. **251 NLRB No. 068**
(promising Ee letter guaranteeing job for Ee's brother in order for brother to be eligible for parole if Ee withdrew charges pending before Bd, violative)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Garden State Motors Co. **JD-160-80**
(telephoning Ee after E received notice of filing of charge by Ee violative where done for purpose of extorting from Ee agreement to drop charge)

5072-6600 Right to file charges with Board

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(asking Ees why they had not stopped Ee from filing certain papers with Bd)

St. Regis Paper Company **247 NLRB No. 105**
(statements to Eq; that filing ULP charges against E could lead to plant closure held violative)

Shuttle Motor Corporation **JD-327-80**
(discharge of Ee allegedly for inquiring of state agency regarding legality of *back stubbing* i.e. E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not unlawful, since Ee's activity not concerted where *back-stubbing* not matter of common complaint; further, Ee called agency before any other adverse action taken against him and subsequent *back-stubbing* against him rectified)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

5072-7700 Restraining union or other concerted activities on company time or premises

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(supervisor threatening Ees with discharge if they did not keep out of U, or if they did not bring to her U material received in mail, unlawful)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(telling Ees not to engage in any discussions about U and that U was *dead* and *over*, unlawful)

Custom Coating

5072-7750 Distribution of union literature or cards

Conagra, Inc. **248 NLRB No. 085**
(informing Ee who had had argument with Ee who was wearing *Vote No* hat that she was not to talk U on company time and U literature was not to be passed out in plant, unlawful, since statement not limited to prohibition during work))

Permanent Label Corporation **248 NLRB No. 021**
(solicitation process includes distributing U card, signing by Ee and return of card to solicitor, therefore rule banning such activity during nonwork time in work areas is overly broad)

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

CTS Keene, Inc. **247 NLRB No. 141**
(warning U adherent to observe E's no solicitation rule, unlawful, where given w/o any apparent basis)

Tartan Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks*, violative)

J. H. Block

Magic Mountain Corporation **JD-337-80**
(supervisor's statement that Ee should drop his U activity or else lose his job, unlawful)

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(E's statement to Ee that she would not have been recalled after her discharge if he had not learned that she did not give another Ee U card, violative)

5072-7775 Wearing of or display of union insignia or other materials

Stafford Construction Co. **250 NLRB No. 128**

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation by instructing Ee to remove U sticker pasted on his locker)

The Nestle Company **248 NLRB No. 106**
(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(request that Ee remove 10-by-16 inch *vote yes* sign from her back for safety's sake since it was causing distraction among Ees on lines, not unlawful; E did not interfere with Ees' wearing of *Yes* and *No* buttons)

Pay 'N Save Corporation **247 NLRB No. 184**
(E's enforcement of rule against wearing of buttons on store premises, unlawful, where E allowed Ees to wear various kinds of religious as well as other buttons but disparately enforced its button policy against Ees wearing U buttons)

Pay 'N Save Corporation **247 NLRB No. 184**
(E's unwritten rule against wearing of political or controversial buttons, including U buttons, unlawful, where there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

5072-7787 Other restraints

Syracuse Dy-Dee Diaper Service **251 NLRB No. 135**
(E's telling Ee he did not want to hear anything more about U, violative)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(E's searching Ee's locker for U documents, unlawful)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(prohibiting Ees from entering into work room of U activist held violative)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation where, in response to Ee's demand for improved working conditions, E told Ee that she should keep her mouth shut and not start trouble)

Conagra, Inc. **248 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee with regard to another Ee not to talk U with that Ee, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat*, unlawful)

Roadway Express, Inc. **JD-281-80**
(superintendent questioning of Ee as to why Ee had called U business agent about allegedly unsafe truck and instructing Ee to call superintendent directly, lawful, where superintendent was giving instruction to newly assigned driver as to proper procedure to follow in event of breakdown and superintendent did not forbid Ees from discussing safety matters or complaints with U officials)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time*, w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

5072-8000 Confiscating union literature, etc.

Clinton Inn **249 NLRB No. 022**
(confiscating U cards from Ees and removing U leaflets from cars in Ees' parking lot, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

Lika Corporation **JD-(SF)-69-80**
(removing U leaflets from automobiles in E-parking lot and throwing them away)

5072-8300 Interference with union or employee meetings

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(telling Ees not to attend U meetings, encourage U representation, or sign U cards, unlawful)

5072-8500 Interference with strike or picketing

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(threatening non-unit Ees with loss of jobs if they refused to cross picket line, violative)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(threatening attorney Ees with discipline for participating in clerical picket line, and entering notations in their personnel files that they had engaged in such activity, unlawful)

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

5072-8600 Retaliation for engaging in union or other protected activity

United Services For The Handicapped **251 NLRB No. 117**
(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(refusing to allow to return to work Ees who had walked off job to protest reduction in piecework rate violative and in effect constructive discharge)

Universal Service Contractors **247 NLRB No. 097**
(threatening striking Ees with discharge if they did not return to work violative)

Bucyrus-Erie Company **247 NLRB No. 059**
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

Monongahela Steel Corporation **JD-392-80**
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

Dooley Equipment Corporation **JD-215-80**
(threatened discharge for voting in election)

5072-9200 Interference with intra-union activities

Welfare and Pension Funds, Blasters, Drillrunners and Miners Union Local No. 29 and Their Trustees Louis Sanzo, Amadio A. Petito, Paul Crowley, and Theodore King **251 NLRB No. 165**
(Ee of U pension fund involved in protected intra-U activity when he: protested to President of U.S. about loss of U jobs, how members were referred to jobs, sought reelection as secretary-treasurer of U; discharge for such activity violative)

5072-9900 Interference with or attempt to influence intra-U election

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(E's statement to Ee who, during her campaign for U office distributed leaflet depicting E and U official in caricature with arms linked, that E could sue Ee for slander, not unlawful, where E's remark was not critical of leaflet's political message nor related to Ee's intra-U activities, but rather was directed to misspelling of his name and portrayal of him in caricature)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(E's statement to Ee, engaged in campaign for U office, ordering her back to her work area and stating he ought to have her locked up for damage she had already done, not unlawful, where E made no specific reference to Ee's electioneering, there was no evidence establishing that E knew Ee was campaigning, and there is no showing that Ee had campaign material in her possession at that time)

5078 INTERFERENCE WITH ELECTION OR REPRESENTATION PROCEEDINGS OF BOARD

5078-4000 Efforts to influence result

Catalina Yachts **250 NLRB No. 048**
(distributing *Vote No* buttons and T-shirts as well to Ees, unlawful since Ees were forced to manifest their choices and the shirts were of value to Ees and intended to influence their votes; inducement of Ee to wear *Vote No* button, unlawful for same reasons)

5078-4020 Concessions to influence vote

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(bus service provided by E to its Ees week before election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

Permanent Label Corporation **248 NLRB No. 021**
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

Connecticut Foundry Company **247 NLRB No. 145**
(increase granted immediately prior to election while Ees were on strike violative)

J. H. Block

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

Chef's Pantry, Inc. **247 NLRB No. 018**
(instituting new educational program before election, unlawful)

5078-4025 Withholding benefits to influence vote

Chef's Pantry, Inc. **247 NLRB No. 018**
(discriminatorily denying benefits of newly-instituted educational program to leader of organizing campaign, unlawful)

Chef's Pantry, Inc. **247 NLRB No. 018**
(revising long-standing policy prohibiting beards, and shortly before election permitting Ees to grow beards, unlawful)

5078-4035 Accelerating effective date of wage increase

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(violation where E accelerated announcement and effective date of wage increase and added benefits in order to influence Ees during election campaign)

5078-4050 Promise of benefit

Century Moving

Lyman Steel Company **249 NLRB No. 040**
(promising Ees wage increase if they withheld their support from Us, held violative)

St. Francis Hospital **249 NLRB No. 017**
(working conditions would improve if U lost election)

Carbonex Coal Company **248 NLRB No. 107**
(promise to Ees of tonnage bonus if U was defeated)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

5078-4070 Hiring or retaining antiunion employees

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

5078-4080 Changes in conditions of employment or threats thereof in connection with election

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**

5078-4080—Cont.

(foreman's threatening Ees that E would discharge Ees who voted for U held violative)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company **249 NLRB No. 040**
(telling Ee that E intended to fire U activist if E lost R election)

Lyman Steel Company **249 NLRB No. 040**
(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off,* held violative)

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

J. H. Block

J. H. Block

Dooley Equipment Corporation **JD-215-80**
(threatened discharge for voting in election)

5078-7000 Refusal to furnish Excelsior list

St. Francis Hospital **249 NLRB No. 017**
(where excelsior list provided by E contained some incorrect and misleading information; such as, surnames and first and middle initials and E failed to inform R/O of corrected addresses, no violation as no evidence that E intended to willfully frustrate Bd processes; however, if facts revealed such willfulness violation could be found)

5078-8000 Restraining employees from voting

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(statement by E president to U organizer, asking her whether she wanted to stay home on day of election and telling her she should do so if she desired, unlawful)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(interfering with Ee's right to vote in U election by questioning her eligibility while expressing opinion that she should not vote or that it would look bad for other departments or Ees for her to vote, unlawful)

5078-8100 Curtailing employee's union activities by promotion to supervisor

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(promotion of *housekeeper* who was U adherent to *assistant executive housekeeper* a few days before election and where position of a second assistant executive housekeeper had not existed before, violative, since purpose of promotion was to curtail her U activities)

5078-9000 Questioning employees on how they voted

Catalina Yachts **250 NLRB No. 048**
(distributing *Vote No* buttons and T-shirts as well to Ees, unlawful since Ees were forced to manifest their choices and the shirts were of value to Ees and intended to influence their votes; inducement of Ee to wear *Vote No* button, unlawful for same reasons)

Connecticut Foundry Company **247 NLRB No. 145**
(E who asked returned striker if he had voted for U when Ee asked for raise violated Act)

5081 INTERFERENCE WITH BOARD PROCEEDINGS

5081-1700 Interference with Board investigation

Bechtel Power Corporation **248 NLRB No. 166**
(E's insistence that supervisor who had filed charges with Bd could talk to Bd agent only in presence of company attorney, violative, since presence of company attorney would inhibit supervisor in giving information regarding charges filed in aid of all Ees)

Four Rivers Coal Company **JD-209-80**
(violation where E warned and instructed Ee not to sign statements for GC then investigating and prosecuting ULP case and requested a copy of any statement signed by such Ee)

Albertson's Inc. **JD-(SF)-104-80**
(questioning Ee about Ee's participation in Bd investigation, unlawful, since E did not show that questioning was for legitimate purpose and there was no requisite showing of voluntariness to Ee's participation in questioning)

5081-3300 Interference with testimony of Board witness

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(suggesting to Ee that she could disregard Bd subpoena, encouraging her not to appear at Bd hearing and threatening her with reprisal unless she testified favorably to E, unlawful)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's suggestion to Ee, when Ee produced subpoena requiring his presence at Bd hearing, that Ee remember that E had told Ee *to tell the guys to stay at the machines,* held violative of 8(a)(1) but not 8(a)(4), since E thereby restrained and coerced Ee in exercise of protected right and obligation to give testimony under Act)

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation where, when Ee mentioned that he had been subpoenaed and intended to try to stay close to what his affidavit to NLRB officer said when he testified, E's agent asked to see his affidavit; assurance that production of affidavit was voluntary did not exculpate request)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(questioning Ee regarding investigation by Bd agent)

The Nestle Company **248 NLRB No. 106**
(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

Coastline Coal Corporation **247 NLRB No. 100**
(telling Ee that he would be reinstated if he withdrew his charge against E and that he should not testify against E in Bd hearing, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(asking Ee who was expected to be subpoened to testify at Bd hearing *if she had received a paper about going to ct* and that if it came by registered mail she did not have to pick it up at the post office and nothing could be done about it if she did not pick it up)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(refusal to permit subpenaed Ee to attend Bd hearing, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's speech stating to Ees that it would learn at trial identity of Ees who made allegedly false accusations against E, unlawful, since it tended to create fear of retaliation in minds of Ees who identified themselves in such manner, and E thereby inhibited vindication of their statutory rights by their testimony at Bd hearing)

Four Rivers Coal Company **JD-209-80**
(violation where E warned and instructed Ee not to sign statements for GC then investigating and prosecuting ULP case and requested a copy of any statement signed by such Ee)

World Wide Press, Inc. **JD-(SF)-12-80**
(harassment of Ee about testimony adverse to E that she had given at prior Bd hearing, unlawful)

5081-7000 Interference with access to Bd processes

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**
(enforcement denied where ct adhered to standards set down in *Bourne* in regard to whether E's interrogation of Ee violated 8(a)(1) and found that record in proceedings lacked substantial evidence to support conclusions contrary to those of ALJ, or to support view that interrogation in any way interfered with Ee rights)

5081-8700 Inducement of withdrawal of charges

Coastline Coal Corporation **247 NLRB No. 100**
(telling Ee that he would be reinstated if he withdrew his charge against E and that he should not testify against E in Bd hearing, unlawful)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

5082 ACTIONS AGAINST SUPERVISOR

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

5082-2500 For activities inconsistent with status as supervisor

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**

5082-2500—Cont.

(discharge of supervisor solely for that supervisor's own U activities does not contravene...Act)

5082-5000 For testimony adverse to employer

Alfred M. Lewis, Inc. **250 NLRB No. 088**
(at grievance hearing)

5084 ASSISTANCE TO UNIONS

5084-0100 Generally

Argano Electric Corp. **248 NLRB No. 049**
(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held *violative of Sections 8(a)(2), (3), (5) and (1) of Act*)

5084-2500 Assistance where 8(a)(2) not found

5084-2567 Inside or favored union

United States Postal Service **248 NLRB No. 097**
(postal service's conduct permitting outside U's representative, during new Ee orientation sessions, to make purportedly misleading or disparaging remarks about incumbent U's exclusive bargaining status, not unlawful; statements were not attributable to postal service and it made effort to dispel possible misunderstandings on part of new Ees, provided incumbent U opportunity to respond to reval U's remarks, and informed Us of consequences of iterating possibly disrespectful or misleading remarks)

5084-5000 Forms of assistance

5084-5033 Contract with assisted union

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

Baine Service Systems, Inc. **248 NLRB No. 087**
(E's statement that Ees must become members of illegally recognized U to keep their jobs violated Act)

Baine Service Systems, Inc. **248 NLRB No. 087**
(Ee's would be discharged if they refused to sign checkoff authorization cards in favor of illegally recognized U)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5050 Exclusive recognition of minority union

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

5084-5050-3300 Good faith as to majority status immaterial

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5050-6700 Subsequent acquisition of majority status immaterial

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5067 Inducement of employees to join union

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E offering wage increases during negotiations with Ee committee, unlawful, since made to discourage support for outside U in view of E's haste in presenting proposals after obtaining knowledge of outside U's organizing efforts)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(E's alleged promise to obtain U membership cards to permit Ees to work unmolested on U jobs, not unlawful, where evidence showed that Ees did not reasonably believe that E proposed to foist U membership on them; although E initiated possibility of obtaining spurious U affiliation, Ees on own initiative sought genuine representation)

5084-5075 Permitting union control over hiring and employment

Cowlitz Studd Company **JD-(SF)-141-80**
(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

5084-5083 Solicitation of employees

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

5084-7500 Midwest Piping doctrine

N.L.R.B. v. Newport Div. of Wintex Knitting Mi lls, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULp charges against E, Bd postponed election until resolution of charges and while charges pending (U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts) Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's order against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

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5090 CONTRACTS

5090-5000 Affirmative defenses

5090-5050 Contract provision

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

5090-7500 Union-security agreements

5090-7525 Execution or maintenance of invalid agreement

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(enforcement of agreement with security clause where U did not have majority, unlawful)

5090-8700 Discriminatory maintenance of contract clause

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

5090-8750 Superseniority

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

5096 VIOLENCE AND THREATS THEREOF

5096-2100 Arrest

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

5096-2100—Cont.

Schlegel Oklahoma, Inc. **250 NLRB No. 012**
(threatening arrest of Ees for handbilling Ees on public thoroughfare adjacent to plant entrance, unlawful)

5096-2800 Assault on, and abuse of, pickets

Excavation-Construction, Inc. **248 NLRB No. 081**
(where pickets belligerently prevented E from driving its truck through picket line, E's physical retaliation against pickets not violation of Act)

B. N. Beard Company **248 NLRB No. 016**
(threatening picket with vehicular assault by driving vehicle close to him at excessive speed, unlawful)

5096-8000 Assault on union representative or threat thereof

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(violation, where guard hired by E during strike cursed U representatives who were in car on public street in front of E's premises, shouting *we don't want to see you any more*, and pounded on representatives' car in presence of strikers)

5096-8400 Threats of bodily harm

Overnite Transportation Company **251 NLRB No. 140**
(discharge of Ee truckdriver and refusal to reinstate him assertedly because he refused to drive, unlawful where Ee was complaining with other Ees about threat to personal safety because of driving during strike; Ee was refusing to drive as part of concerted attempt, on behalf of both himself and other drivers, to have safer working conditions and Ee's discharge was to discourage Ee and other Ees from engaging in these activities)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(violation where E threatened to inflict physical injury on Ee because of his filing charge with Bd and telephoning state department of human rights in response to E's refusal to make Ee an apprentice printer and pay him the contractual wage rate)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(supervisor's firing pistol in air while conversing with Ee on picket line, unlawful)

B. N. Beard Company **248 NLRB No. 016**
(E's statement to picketing Ee that E would kill him if E found him anywhere around plant, not unlawful, since it was incredible that E literally intended to do so; however, such statement is not to be equated to lawful Ee picketing conduct)

7500 AFFIRMATIVE DEFENSES TO CHARGES OF INTERFERENCE, RESTRAINT, OR COERCION

7525 NON-COERCIVE NATURE OF MISCONDUCT

General Thermo, Inc. **250 NLRB No. 158**
(assistant plant manager's interrogation of Ee as to his U activities, unlawful, notwithstanding social nature of occasion in which interrogation took place)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(payroll supervisor's response to U steward's request for his paycheck, to effect that —*you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

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Werth Engineering, Inc. **JD-295-80**
(questioning of Ee by E about his U activities is inherently coercive and fact that supervisor and Ee are personal friends is immaterial)

Flexsteel Industries, Inc. **JD-(SF)-274-79**
(supervisor's friendly warnings to Ees about foremen being instructed to be on lookout for Ees distributing U literature, not unlawful)

7550 MISCONDUCT OF EMPLOYEE

7550-0100 Generally

7550-0125 Condonation vitiates defense

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**
(E's remarks blaming Ee for strike violative, since E had condoned Ee's conduct where, assuming Ee was responsible for work stoppage and work stoppage was violative of no-strike clause as contended, E had allowed Ee to return to work and Ee worked for several weeks)

Owens-Corning Power and Process, a Division of Owens-Corning Fiberglas, Inc. **JD-(SF)-208-80**
(where Ees engaged in economic strike which was initially rendered unprotected by breach of no-strike clause, E's later condonation of strike by reinstatement of strikers and its agreement that *the slate would be wiped clean* estopped it from asserting unlawful nature of strike)

7550-0133 Lawful discipline or admonition

General Telephone Company of Michigan **251 NLRB No. 099**
(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(defense by E, operating legal services as contractor of federal agency, on ground that statute establishing agency forbade Ee conduct for which they were allegedly unlawfully disciplined, rejected; enabling statute is construed to refer to NLRA, to have recognized its provisions, and to have incorporated various interpretations and applications of Sec.7)

Lika Corporation **JD-(SF)-69-80**
(denying Ee, suspected of starting 2 fires in E's plant; access to E's parking lot when he was not working not violative)

7550-0143 Disloyalty of employer

Pyromactics, Inc. **251 NLRB No. 141**
(Ee's circulation of ptn to obtain time off during holiday season did not justify discharge on ground of *disloyalty* based on Ee's continued activity after E had explained that production requirements would not permit time off, and on Ee's statement that Ees, as group, would fake sickness so as not to report for work during holiday period; statement was not reason for discharge and, while Ee's desire for time off may have demonstrated bad judgment, it gave E only the right to refuse time off, not to discharge Ee for his protected concerted activity)

Hotel

7550-0150 Good-faith belief as to misconduct may be defense

General Telephone Company of Michigan **251 NLRB No. 099**
(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

7550-0175 Mistaken belief as to misconduct no defense if conduct in fact did not occur

Babcock

7550-2500 Undermining or circumventing grievance procedure

United States Postal Service **250 NLRB No. 156**
(U steward's action in refusing to leave office of E's station manager at grievance proceeding after manager cut off U steward's presentation, did not justify E's disciplinary action against him)

7550-5000 Insubordination

Sullair P.T.O., Inc. **250 NLRB No. 104**
(discharge of Ee unlawful, notwithstanding E's contention that discharge was result of Ee's insubordination and abusive language directed at E's manager in Ee's protest of change in company policy affecting condition of employment, where Ee's language was generally directed toward company and not to E's manager and was type of language used commonly in Ee's shop)

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

Southwest Detroit Hospital **249 NLRB No. 071**
(discharge of licensed pratical nurse who informed supervisor he was concerned he had not been put in charge of shift and received premium charge pay provided for under contract and that he thought supervisors had made stupid decision by placing nursing technician in charge not unlawful, where discharge for his precipitous decision to leave subsequent meeting with supervisor and reusal to discuss matter further rather than for invoking terms of bargaining agreement)

Roadway Express, Inc. **JD-281-80**
(discharge of Ee for refusing to obey order, lawful, notwithstanding Ee's contention that he was discharged for making a safety complaint to Depart-

7550-5000—Cont.

ment of Transportation since there was no basis for concluding that E had any knowledge of Ee's compalaint)

Best Foods CPC Company **JD-148-80**
(no violation where Ee was suspended w/o pay for her refusal to report to supervisor's office in connection with her alleged failure to punch out in violation of company rule)

7550-6000 Breach of employer's rules

CTS Keene, Inc. **247 NLRB No. 141**
(warning U adherent to observe E's no solicitation rule, unlawful, where given w/o any apparent basis)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time*, w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

7550-7500 Strike misconduct

Fun Striders, Inc. **250 NLRB No. 087**
(refusal to reinstate strikers who had distributed protected, but nontheless, politically inflamatory materials, violative)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where pickets belligerently prevented E from driving its truck through picket line, E's physical retaliation against pickets not violation of Act)

7550-8700 Breach of no-strike clause

A

7567 VOLUNTARY QUIT

Yellow Freight System, Inc. **247 NLRB No. 028**
(no violation where driver refused or delayed work assignment and his termination -- whether it be deemed a quit or a discharge -- was based on E's legitimate interest in moving freight rather than, as contended, Ee's assertion of a contractual right)

Gar-Wood Detroit Truck Equipment Company **JD-747-79**
(Ee voluntarily quit when he refused job assignment well w/i his capability, stating he was going to punch out, and subsequently punched out, walked off job and premises, notwithstanding he had been informed by E that if he punched he would be considered as quitting his job)

7580 FAILURE TO APPLY FOR REINSTATEMENT

Central Cadillac Company **JD-243-80**
(E's refusal to allow striking Ees to return to work w/o doctor's certificate, unlawful, notwithstanding E's contention that Ees made no valid unconditional offer to return to work, where strikers reported in body to E's premises at regular reporting time, most in work clothes; furthermore, medical certificate requirement instituted night before return and, subsequently, never enforced)

518 EMPLOYER DOMINATION, ASSISTANCE OR SUPPORT OF LABOR ORGANIZATION

0100 GENERALLY

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(vice of dominated labor organization is that E can discourage collective bargaining by holding organization out to his Ees as an instrument for that purpose which they can adhere to w/o incurring his disfavor; in effect the dominated labor organization discourages genuine collective bargaining by giving Ees only semblance of collective bargaining strength while ultimate control is still maintained by E)

2000 FORMS OF DOMINATION AND INTERFERENCE

2001 GENERALLY

South Nassau Communities Hospital **247 NLRB No. 067**
(Act forbids E interference with formation of labor organization whether that interference be *benevolent or malevolent*)

2001-2500 Totality of employer's conduct considered

Hart Ski Mfg. Co., Inc. **JD-11-80**
(domination rather than assistance where Ee committee's formation and continued existence was suggested, encouraged and inspired by management, contract proposals unilaterally prepared by E, committee did not meet or act except when E called meetings, meetings were held on E's premises on paid worktime with supervisors present, E controlled voting by procedure providing ballots, counting votes and providing place for balloting, there were no bylaws and no assets)

2017 EMPLOYER PARTICIPATION IN FORMATION OR INITIATION OF LABOR ORGANIZATION

2017-1400 Initial suggestion or instigation by employer

Coating Products, Inc. **251 NLRB No. 170**
(telling Ees to establish *Ee committee* and bargaining directly with committee on company time during U campaign violative)

Streamway Division of The Scott

South Nassau Communities Hospital **247 NLRB No. 067**
(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

Hart Ski Mfg. Co., Inc. **JD-11-80**

2017-2800 Direct participation of employer

Streamway Division of The Scott

2017-5600 Attendance at organizing meetings of employer's supervisors and agents

Hart Ski Mfg. Co., Inc. **JD-11-80**

2017-7000 Assistance with and participation in initial election

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's establishment of voting eligibility requirement, furnishing of ballots, assistance of supervisor in checking names off voting list and counting ballots indicative of E domination)

2050 TIME OF ORGANIZATION

2050-6700 Concurrent with or immediately after organizational drive of outside union

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

2067 STRUCTURE AND BEHAVIOR OF ORGANIZATION

2067-1400 Lack of constitution and bylaws

Hart Ski Mfg. Co., Inc. **JD-11-80**

2067-2800 Dues

2067-2833 No provision for

South Nassau Communities Hospital **247 NLRB No. 067**
(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

Hart Ski Mfg. Co., Inc. **JD-11-80**

2067-3500 Election procedure

Streamway Division of The Scott

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's establishment of voting eligibility requirement, furnishing of ballots, assistance of supervisor in checking names off voting list and counting ballots indicative of E domination)

2083 ADMINISTRATION OF ORGANIZATION

2083-5000 Interference without domination

South Nassau Communities Hospital **247 NLRB No. 067**
(Act forbids E interference with formation of labor organization whether that interference be *benevolent or malevolent*)

2083-6700 Meetings

2083-6750 Called and attended by employer's representatives

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(domination of Ee Committee where E's owner sat behind desk at meetings, initiated topics for discussion, and Ees felt E controlled committee)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(fact Ee committee never met on own initiative, meetings were always held on paid work time on E's property with supervisors present are indicative of domination)

2083-8300 Employer voice in affairs of employee committee

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(domination of Ee Committee where E's owner sat behind desk at meetings, initiated topics for discussion, and Ees felt E controlled committee)

4000 FORMS OF ASSISTANCE AND SUPPORT

4001 GENERALLY

Siro Security Service, Inc. **247 NLRB No. 157**
(in assessing impact of E assistance to U, totality of circumstances must be considered in determining whether E's conduct was sufficiently pervasive to taint U's majority status. These circumstances include improper conduct of E both before and after recognition and execution of collective bargaining agreement)

4010 SUGGESTION OF FORMATION OR INITIATION OF UNION

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

South Nassau Communities Hospital **247 NLRB No. 067**
(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

EMPLOYER DOMINATION, ASSISTANCE OR SUPPORT OF LABOR ORGANIZATION-518

4020 PERMITTING USE OF COMPANY TIME, PREMISES OR FACILITIES

4020-0100 **Generally**

4020-0133 Contrasting treatment of competing unions

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(E's grant of access to its premises for organizational purposes to favored U while denying access to rival U, violative)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

4020-1700 **Dues collection**

World Wide Press, Inc. **JD-(SF)-12-80**
(calling Ee at home to solicit payment of assisted U's dues under threat that he should look for employment elsewhere if he did not pay them, unlawful)

4020-5000 **Facilities**

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

4020-5020 Bulletin boards

World Wide Press, Inc. **JD-(SF)-12-80**
(permitting Ees to post notices calling for payment of assisted U's dues, unlawful)

4020-5060 Clerical, telephone, and other facilities

Signode Corporation **JD-161-80**
(providing free use of clerical assistance and plant equipment to labor organization substantially controlled by and financially dependent on E, unlawful)

4020-6700 **Meetings**

Coating Products, Inc. **251 NLRB No. 170**
(telling Ees to establish *Ee committee* and bargaining directly with committee on company time during U campaign violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(fact Ee committee never met on own initiative, meetings were always held on paid work time on E's property with supervisors present are indicative of domination)

4020-8300 **Organizational activities**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(violation where E's attorney solicited Ees to sign authorization cards and to enlist support of other Ees for one of two Us conducting organizing campaign; attorney represented and was found to be agent for both favored U and E)

4020-8367 Solicitation

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(E's assistance to favored U by soliciting authorization cards on its behalf from its Ees, violative)

Siro Security Service, Inc. **247 NLRB No. 157**
(threatening Ees with discharge for not signing U application and checkoff cards where U did not have majority and prior to 30 days grace period)

Venture Stores, Inc. **JD-81-80**
(E's soliciting its Ees to join U and permitting U to solicit U membership while applicants were seeking employment with E and on E's premises, violative)

4030 FINANCIAL SUPPORT

4030-1400 **Checkoff**

Siro Security Service, Inc. **247 NLRB No, 157**
(threatening Ees with discharge for not signing U application and checkoff cards where U did not have majority and prior to 30 days grace period)

4030-1408 Deducting union dues without employeee's checkoff authorizations

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(violation where E deducted U dues w/o authorization from Ees and paid monies in nature of dues to U on Ees' behalf w/o deducting these sums from their wages or otherwise collecting those monies from authorizated payroll deductions)

Siro Security Service, Inc. **247 NLRB No. 157**

4030-1433 Refusing permission to withdraw authorizations

United States Postal Service **248 NLRB No. 002**
(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

4030-1467 Soliciting dues deduction authorizations

Siro Security Service, Inc. **247 NLRB No. 157**
(where minority U)

4030-1485 Honoring dues checkoff authorizations for minority union

Siro Security Service, Inc. **247 NLRB No. 157**

4030-5600 **Payment for time spent on union business**

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

Streamway Division of The Scott

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(Ees paid for attendance at U meetings)

Signode Corporation **JD-161-80**
(paying representatives of labor organization subject to substantial control by E for hours spent on organization's business, unlawful)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(paying members of Ee committee wages for time spent in bargaining sessions indicative of domination)

4040 RECOGNITION AND EXECUTION OF CONTRACT

4040-0100 **Generally**

4040-0167 Presumption of majority status at time of execution

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(presumption overcome where credited unrebutted testimony of majority of Ees was that they had never heard of U prior to appearance of U's agent at E's premises demanding that Ees sign checkoff authorization cards)

4040-1700 **Premature when number of employees not representative complement**

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(E's recognition and contracting with favored U at time when U did not represent uncoerced majority of its Ees and E did not employ representative segment of its ultimate Ee compliment, violative)

4040-1733 Expanding unit

Baine Service Systems, Inc. **248 NLRB No. 087**
(U and E by executing contract when both parties knew that size of unit was going to increase violated Act)

4040-2100 **Coerced majority representative**

Siro Security Service, Inc. **247 NLRB No. 157**
(E's recognition by signing contract with security clause with U, unlawful, since it failed to rebut GC's prima facie case of lack of majority and in view of totality of circumstances where recognition was hasty w/o adequate card check, E assisted U in obtaining authorization and checkoff cards by threatening discharge of Ees if they did not sign, and deducted U dues w/o authorization)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority

4040-2100—Cont.

of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-3900 Where bargaining representative is disqualified

Kaplan, Sicking, Hessen, Sugarman, Rosenthal

4040-4200 Where another union recognized

Andersen Sand

4040-4500 Where employer has valid contract with another union

Argano Electric Corp. **248 NLRB No. 049**
(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held *violative* of *Sections 8(a)(2), (3), (5) and (1) of Act*)

4040-5000 Exclusive recognition of minority representative (see also 512-5084)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(E's recognition and contracting with favored U at time when U did not represent uncoerced majority of its Ees and E did not employ representative segment of its ultimate Ee compliment, violative)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(violation by E and favored U where E recognized and executed agreement with such U when U did not represent majority of E's Ees)

Venture Stores, Inc. **JD-81-80**

4040-5025 Good-faith belief as to majority status immaterial

Siro Security Service, Inc. **247 NLRB No. 157**

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-5050 Subsequent acquisition of majority status immaterial

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-6700 During existence of real question of representation (midwest piping doctrine, see also 512-5084)

4040-6701 Generally

4040-6701-3300 Employer obligation of neutrality

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Queen City Paving Co., Inc. **JD-(SF)-156-80**

4040-6701-6700 Question of representation for resolution by Board

N.L.R.B. v. Newport Div. of Wintex Knitting Mi lls, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULp charges against E, Bd postponed election until resolution of charges and while charges pending (U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts) Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's order against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULP charges against E, Bd postponed election until resolution of charges and while charges pending 1 U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts, Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's orders against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

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4040-6733 What creates real question of representation

4040-6733-3300 Colorable claim of competing union

N.L.R.B. v. Newport Div. of Wintex Knitting Mi lls, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULp charges against E, Bd postponed election until resolution of charges and while charges pending (U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts) Bd's finding that qc existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's order against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

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N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULP charges against E, Bd postponed election until resolution of charges and while 5445125024370000003008006 10

Edward A. Utlaut Foundation, Incdward d/b/a Edward A. Utlaut emorial Hospital and Fair Oa ks Nursing Home **249 NLRB No. 162**
(ks Nursing Home

249 NLRB COLLECT UNN

4040-6733-6700 Pendency of petition under section 9

Queen City Paving Co., Inc. **JD-(SF)-156-80**
(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec. 8(f) was no defense because of existence of qcr)

4040-7500 During insulated period of contract

4040-7567 With minority union

4040-7567-3300 Where employer does not have knowledge of loss of majority

Clark Equipment Company **249 NLRB No. 094**
(no violation of 8(a)(2) by E or 8(b)(1)(A) by incumbent U where they negotiated and executed new contract when incumbent no longer represented majority of E's Ees, since E lacked requisite knowledge of incumbent U's loss of majority support; dissidents' committee and its leader withheld from E during insulated period the very evidence that would have required E to cease negotiating with incumbent U)

4040-8300 Extension of contract to additional groups of employees

4040-8325 Where employees are represented by another union

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(treating newly hired electricians as accretion to machinists unit violative as new Ees denied opportunity to choose their bargaining representative)

4050 UNION SECURITY AND PREFERENCE AGREEMENTS

4050-3300 **Agreements legal on their face with assisted unions**

4050-3350 In contract with minority union

Siro Security Service, Inc. **247 NLRB No. 157**
(E's recognition by signing contract with security clause with U, unlawful, since it failed to rebut GC's prima facie case of lack of majority and in view of totality of circumstances where recognition was hasty w/o adequate card check, E assisted U in obtaining authorization and checkoff cards by threatening discharge of Ees if they did not sign, and deducted U dues w/o authorization)

Venture Stores, Inc. **JD-81-80**

4050-6700 **Illegal union security agreements**

4050-6750 Failure to provide 30-day period

4050-6750-6700 **From execution of agreement**

Visu-Craft By H.B.S., Inc. **JD-887-79**
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

4060 PARTICIPATION OF SUPERVISORS IN AFFAIRS OF LABOR ORGANIZATION

4060-0100 **Generally**

Dravo Corporation and J. D. Posillico Corp. **248 NLRB No. 094**
(in refusing to adopt ALJ's interpretation of Bd's decision in *Nassau and Suffolk Contractors Assoc., Inc.*, 118 NLRB 174, Bd pointed out that *Nassau* does not limit a finding of divided loyalty to the steward-supervisor's membership on U negotiating committee)

4060-1600 **Solicitation of union membership and support**

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's request that Ee support incumbent U officials in upcoming U election, made half-year before election, and unaccompanied by any kinds of threats or promises held not to violate 8(a)(2) nor 8(a)(1))

4060-1633 With acquiescence of employer

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(violation, where Ees who were reluntant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

4060-5000 **Serves as officer, or in other official capacity**

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(E's dealing with supervisor as president of U, unlawful)

4060-6700 **Membership on negotiating committee**

Dravo Corporation and J. D. Posillico Corp. **248 NLRB No. 094**
(in refusing to adopt ALJ's interpretation of Bd's decision in *Nassau and Suffolk Contractors Assoc., Inc.*, 118 NLRB 174, Bd pointed out that *Nassau* does not limit a finding of divided loyalty to the steward-supervisor's membership on U negotiating committee)

4060-8300 **Participation in union meetings**

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

4070 DECLARATIONS OF UNION PREFERENCE

4070-5000 **Favoring one outside union over others**

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

4080 CHANGES IN TERMS OF EMPLOYMENT, OR PROMISES OR THREATS THEREOF, TO ASSIST LABOR ORGANIZATION

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(promise to restore hours of work, previously taken away to punish Ees for support of disfavored U, unlawful where promise was made to gain support for U favored by E)

4080-6200 **Promise of benefits**

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(promises of overtime work if Ees signed authorization cards of assisted U, unlawful)

4080-6500 **Threat that proposed merger will not take place**

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E threatening that scheduled merger between it and another company would not take place if E's proposed contract with Ee committee were not ratified or if Ee voted to be represented by outside U, unlawful)

4080-7500 **Threats of shutdown**

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

4090 DISCRIMINATION IN EMPLOYMENT, OR THREATS THEREOF, TO ASSIST LABOR ORGANIZATION

4090-1400 **Discharge, layoff, suspension, or refusal to hire for not supporting favored union**

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(threats of discharge if Ees did not sign authorization cards, of assisted U, unlawful)

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

World Wide Press, Inc. **JD-(SF)-12-80**
(calling Ee at home to solicit payment of assisted U's dues under threat that he should look for employment elsewhere if he did not pay them, unlawful)

4090-3700 **Discharge or layoff for refusal to sign checkoff authorization**

Visu-Craft By H.B.S., Inc. **JD-887-79**
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

4090-9100 **Veiled threats**

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

6000 STATUS OF SUCCESSOR TO DOMINATED OR ASSISTED LABOR ORGANIZATION

8000 AFFIRMATIVE DEFENSES

8050 COMPLIANCE WITH CONTRACT

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

524 EMPLOYER DISCRIMINATION IN EMPLOYMENT

0100 GENERALLY

0117 SCOPE OF PROSCRIPTION

0117-2500 Act does not touch normal exercise of the right of the employer to select its employees or to discharge them

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

0117-6200 Section 8(a)(3) not utilized for implementation or section 10(k) determination

Sullivan Transfer Co. **247 NLRB No. 117**

(where actions of all parties are part of acute, bona fide jurisdictional dispute, E does not violate Sec. 8(a)(3) by choosing one group of Ees over another)

0133 INDIVIDUALS AFFECTED

0133-1200 Innocent bystanders

Hedison Manufacturing Company **249 NLRB No. 096**

(laid off Ees who were not affirmatively shown to be U supporters held discriminated against as if they had been U supporters, where they were caught up in their fellow Ees' U adherence and were victims of E's effort to crush U)

0133-5000 Relative of active union members

Ahstabula Forge, A Division of ABS Industries, Inc. **JD-388-80**

(E's discharge of Ee and subsequent refusal to reinstate him because his father was U president, unlawful)

The Royal General Company **JD-17-80**

(discharge of Ee because he was brother of U adherent, unlawful)

0133-6300 Employees anticipating change in status or tenure

Wright Plastic Products, Inc. **247 NLRB No. 101**

(discharge for discriminatory reasons prior to time resignation effective, violative)

0133-7500 Applicants for employment

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**

(where E refused to rehire millwirght because of his activities as U steward, other millwrights lost work as consequence of E's discrimination and they too were discriminatees; millwrights would have performed work assigned to ironworkers but for E disccrimination against steward)

Central Transport, Inc. **247 NLRB No. 198**

(refusal to hire applicant because he previously worked for organized E, violative)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**

(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

0133-8700 Supervisory employees

0133-8750 Applicant for supervisory position

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

0150 WHAT CONSTITUTES DISCRIMINATION

0150-5000 Change in terms or conditions of employment

General Warehouse Corp. **247 NLRB No. 142**

(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**

(institution of new restroom use policy in pro-U department requiring Ees to sign out in order to use restroom and providing disciplinary action if Ees signed out more than five times each week, violative, where inference of unlawful motivation was supported by E's knowledge that department was markedly pro-U and E failed to substantiate defense of business justification of improving sagging production)

0150-7500 Lack of change which would otherwise have occurred in terms and conditions

Service Garage, Inc. **247 NLRB No. 115**

(denial of announced wage increase because of Ees' U activities violative; moreover, fact that no past practice existed for granting wage increases immaterial)

0167 REQUIREMENT OF ENCOURAGEMENT OR DISCOURAGEMENT OF UNION MEMBERSHIP

0167-0500 Only Encouragement or Discouragement Resulting From Discrimination Prohibited

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(Bd has burden of proving that discharge was motivated by anti-U animus)

0167-1000 Affirmative Showing of Prohibited Motive Required

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

(threshold question where discharge was pursuant to rule prohibiting dissemination of E's strictly private material (classified wage survey data) is whether rule was prohibited by Act; invalid rule cannot support discharge even if E's only motivation in enforcing rule is not anti-U; only if rule is determined to be valid under Act, would Bd assess motive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

0167-1017 Violation where action motivated in part by objective of encouragement or discouragement

Fixtures Manufacturing Corporation **251 NLRB No. 107**

(where E had cause to fire Ee but did not do so until day after Ee attended U meeting, E violated Act as purpose was to discourage U membership)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**

(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

0167-1033 Prohibited motive inferable from conduct Inherently destructive of employee rights

Henry Vogt Machine Company **251 NLRB No. 040**

(withdrawal of cafeteria privileges after Ees chose U representative found inherently discriminatory since it contained clear and dramatic message for Ees who had chosen representation and for the remaining unrepresented Ees)

Freezer Queen Foods, Inc. **249 NLRB No. 045**

(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for

0167-1033—Cont.

time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it was not possible to achieve its purpose by tolling probationary period during strike, rejected)

Dixie Machine Rebuilders Inc. **248 NLRB No. 116**
(penalizing Ee because U was actively organizing or was successful in Bd election is inherently distructive of important Ee rights and thus requires no proof of anti-U motivation)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(enforcing rule that could apply to those not engaging in protected activity as well as to Ee organizers could not be held to be *inherently destructive*)

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(proof of subjective motive can, in limited situations, be made out from conduct itself)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(conduct held inherently destructive where E unilaterally ceased contributing to benefit funds and thus jeopardized U's position as bargaining agent and directly and unambiguously deterred protected activity)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

0167-1067 Motive Must be proved where adverse effect of conduct comparatively slight and employer has proved substantial business justification

Burgess Mining

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(where impact on protected rights is slight or indirect, or where it may be explained by reference to other lawful considerations, it is prima facie lawful, and an affirmative showing of improper motivation must be made)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

0167-5000 Discrimination must be based on union animus or protected activity

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

0167-9000 True purpose or real motive is test

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(Bd is not compelled to accept stated reason for which Ee was discharged when there is reasonable cause to believe ground put forward by E was not true one and real reason was E's dissatisfaction with Ee's U activity)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(E can best show improper motives did not move it to discharge Ee by adducing proof that other Ees were discharged for same reason that Ee was discharged, where there is no suggestion that other Ees were discharged for improper motive)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(E's statement to supervisor that he should find out who had been talking about U and get rid of her proof that motivation was illegal and fact that discriminatee was poor Ee irrelevant)

0183 ADEQUACY OF EVIDENCE TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP

0183-3300 Burden of coming forward

0183-3333 Burden of showing discriminatory motive on General Counsel

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(when E shows legitimate reason for discharge of Ee, burden shifts to GC to prove improper motive moved E to discharge Ee)

0183-3367 Prima facie case places burden of coming forward on employer

East Wind Enterprises **250 NLRB No. 101**
(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

0183-6700 Sufficiency of evidence

0183-6701 Generally

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

0183-6712 Circumstantial evidence

0183-6712-2500 Direct evidence rarely obtainable and not essential

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(direct evidence of discriminatory motivation is not necessary to support finding of discrimination and such intent may be inferred from record as a whole)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(E's knowledge of Ees' U activities and sympathies may be inferred from circumstantial evidence and may be just as reliable as direct evidence)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(state of mind of E officials who make decision to discharge Ee reflects motive for discharge; GC will rarely be able to produce direct evidence of official's state of mind and therefore GC can only produce circumstantial evidence from which Bd can infer finding of improper motive)

0183-6725 Inference of discrimination

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(inference of discriminatory motive warranted where E would not reinstate Ee allegedly because E would no longer get along with Ee after Ee threatened ct action against E and, when considering how valuable Ee was to E, E would not so summarily have allowed Ee to leave had it not been for certain knowledge that E had of his very recent U activities)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(trier of fact may infer motive from total circumstances; if he finds stated motive for discharge is false, he can infer motive is unlawful where surrounding facts tend to reinforce such inference)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

0183-6750 Insignificance of discriminatee in union evidence of lack of prohibited motive

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

0183-6775 Union activities of employee plus discharge or discipline do not alone make out a case of prohibited discrimination

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

0183-6787 While activity no bar to discharge for legitimate reasons, it may disclose union animus when reasons given do not ring true

Dixie Machine Rebuilders Inc. **248 NLRB No. 116**

0183-6789 Lack of employer's specific knowledge of individual employees and differences in union activity between individual employees immaterial

La Habra Dodge, Inc. **251 NLRB No. 001**
(discharge of Ee mechanic at automobile dealer for doing faulty work, not unlawful, where E had no knowledge of Ee's U activities)

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

Wright Plastic Products, Inc. **247 NLRB No. 101**
(discharge of Ees who signed U authorization cards violative and lack of specific evidence of E's knowledge of individual Ees or difference in U activity between individual Ees is immaterial where discharges occurred because of E's desire to frustrate and dissipate Ee support of U)

1700 UNION OR OTHER PROTECTED UNION ACTIVITY OF DISCRIMINATEE

1717 ACTIVE PARTICIPATION IN UNION ACTIVITIES

1717-1000 Officers or leaders in union affairs

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purposes was to discourage Ee so she would quit)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

N.L.R.B. v. Triangle Sheet Metal Works, Inc. **607 F.2d 998(T) (C.A. 2, 1979)**
(layoff of valuable Ee who was campaign manager for candidate for U president whom E opposed violative notwithstanding economic necessity for layoff since Ee's name not on original layoff list but his name was substituted thereon by president)

1717-1900 Conspicuous in unionizing effort

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

1717-2400 Grievance protest or acting as grievance committeeman

Ford Motor Company **251 NLRB No. 066**
(denial of promotions for Ees to available supervisory positions where they had filed grievance, contemplated further legal action and filed charge with Bd, unlawful)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

1717-3300 Demanding compliance with bargaining contract

Sullivan Transfer Co. **247 NLRB No. 117**
(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

1717-5700 Participation in Board proceeding

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

Don Pizzolato, Inc. **249 NLRB No. 136**
(discharge for participation in conference on representation ptn held at Bd office violative)

Earl Kuhns d/b/a Frenchy's K

1717-7200 Solicitation

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purposes proscribed by rule were tolerated at plant)

1717-7600 Strike leadership

1717-7625 Leadership in spontaneous work stoppage

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**
(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

1717-7650 Non-ULP strike

C

1717-8100 Refusal to assist company or favored union

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

1717-9800 Union stewardship

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

1717-9800—Cont.

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**
(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

C. H. Heist Corporation **250 NLRB No. 185**
(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

L. R. Bob Spillers Painting Co. **JD-(SF)-169-80**
(discharge of Ee for vigorous pursual of duties as U steward violative)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

1783 KNOWLEDGE OF EMPLOYER AS TO DISCRIMINATEE'S UNION ACTIVITY

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(E held to have knowledge of Ees' protected activity in view of his admissions in affidavit that he discharged Ees after he was told about their picketing and their leaving w/o punching out; moreover, Ees described their activities to supervisor before they were fired, and supervisor knew about discharged Ee's picketing and saw other fellow Ees leave plant together)

1783-0100 Generally

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

1783-0150 Employer chargeable with supervisor's knowledge

Magic Mountain Corporation **JD-337-80**
(general manager who discharged Ee charged with knowledge of Ee's U activity where supervisor's knowledge was imputed to general manager and inference was warranted that E knew of Ee's U activity where small work force was generally involved in Ee's U solicitation)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(although E's foreman declared, while a witness, that Ee had conceded some U connection, such declaration was vague as Ee having reported merely that he had called U; upon such limited record, foreman's newly-acquired information's legal imputation to managerial supervisors would not suffice to charge E with knowledge that Ee had become U adherent)

Neckover Trailer Manufacturing Company **JD-256-80**
(under peculiar circumstances of case, knowledge of Ees' U activity not imputed through their supervisors, who themselves were engaged in U activity, for anti-U purposes)

1783-2500 Effect of absence of

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

1783-2550 Sustained as defense

Simpson Steel Fabricators

Norym Company, Inc. **JD-847-79**
(discharge of Ees, not unlawful, since for excessive restroom breaks rather than for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

1783-7500 Inferable

1783-7533 From circumstances

Franklin Fouts, d/b/a B

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(knowledge inferred from relatively small number of Ees involved, occurrence of substantial U activity during working hours, and supervisors' practice of frequently talking to Ees and having coffee breaks with them)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(where E was aware of *unrest* among Ees and that it involved U activity)

Smedberg Machine

Marcel Schurman Co., Inc. v. N.L.R.B. **620 F.2d 310(T) (C.A. 9, 1980)**
(supervisor's statement to Ee after Ee's discharge, *maybe you (were) fired because you joined the union,* held insufficient basis from which to infer that discharge was in response to Ee's U activities, where supervisor did not participate in decision to discharge Ee and supervisors who decided to terminate Ee did not know of his U activities; supervisor's knowledge cannot, w/o more, be imputed to those supervisors who made decision to discharge Ee)

1783-7567 From smallness of plant

Syracuse Dy-Dee Diaper Service **251 NLRB No. 135**
(discharge of U adherents, violative, where E's knowledge of Ees passing out U cards and holding U meetings was inferred from small size of plant, reasons asserted for discharges were pretextual, and timing of discharges occurred w/i two weeks of organizational campaign)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(10 to 12 and 4 to 5 Ees employed respectively by each of two Ees constituting single integrated enterprise and/or joint E)

Smedberg Machine

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(fact that Ees attempted to conceal U activity from E does not eliminate weight to be accorded smallness of plant)

K

Custom Wood Interiors, Inc. **248 NLRB No. 023**

Florida Cities Water Company **247 NLRB No. 111**

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**

Magic Mountain Corporation **JD-337-80**
(general manager who discharged Ee charged with knowledge of Ee's U activity where supervisor's knowledge was imputed to general manager and inference was warranted that E knew of Ee's U activity where small work force was generally involved in Ee's U solicitation)

P.M.S. West, Inc. **JD-(SF)-47-80**
(small plant doctrine standing alone does not impute knowledge of U activity to E; there must be some direct evidence to support inference)

3300 DISCRIMINATION FOR FILING CHARGES OR GIVING TESTIMONY

3301 GENERALLY

3301-5000 Scope of proscription

Hi-Craft Clothing Co. **251 NLRB No. 173**
(as to its application to supervisors)

Clark

3325 EMPLOYEE ACTIVITY PROTECTED

3325-1400 Filing charges or petition

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Ford Motor Company **251 NLRB No. 066**
(harassment of Ee and reprimand of him in retaliation for filing ULP charge, unlawful)

Ford Motor Company **251 NLRB No. 066**
(denial of promotions for Ees to available supervisory positions where they had filed grievance, contemplated further legal action and filed charge with Bd, unlawful)

Ford Motor Company **251 NLRB No. 066**

3325-1400—Cont.

(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(refusal to grant Ee one day of leave and warning and suspending him as result of such refusal, unlawful where disciplinary measures were taken by E in retaliation for filing charge with Bd)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(discharge for filing charges with Bd, unlawful)

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against him* held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(violation where Ee was laid off for registering complaint with Division of Human Resources and for filing deauthorization ptn with Bd)

Medical Mutual of Cleveland, Inc. **248 NLRB No. 074**
(although Ee was legitimately on probation for low production, his discharge was unlawful where termination occurred two days after ULP complaint had issued on Ee's charge and after she refused to assent to E's request for postponement of hearing on her cause)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**
(discharge of U steward for filing charges with the Bd against E, unlawful)

Sonoma Community Press d/b/a News Herald **247 NLRB No. 148**
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

Hotel

Magic Mountain Corporation **JD-337-80**
(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(discharge of U steward who filed charges with Bd and other government agencies not unlawful where for violation of his contractual duty as U officer to take steps to terminate work stoppage)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance of which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

3325-2100 Consulting with Board agent

Albany Steel and Brass Corporation **JD-227-80**
(discharge of admittedly *very knowledgeable Ee* assertedly because of his absenteeism and for his job deficiencies held violative where E terminated Ee forty minutes after being notified that Ee intended to seek assistance from Bd concerning his pension dispute with E; discharge was precipitous and in middle of pay period)

3325-2800 Announced intent to file charges

Hi-Craft Clothing Co. **251 NLRB No. 173**
(discharge of supervisor for threatening that he was going to file charges with NLRB because E had not given him promised bonus, violative, as E's action became known to other Ees and coerced them in exercise of their rights; moreover fact that supervisors grievance was not covered under Act immaterial, since it is Bd's function, not E's to decide whether individual is covered by Act or claim has merit)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Clark

3325-4200 Giving testimony at Bd or other proceeding

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

Fundacion Educativa Ana G. Mendez, Inc. d/b/a Colegio Universitario Del Turabo **251 NLRB No. 203**
(no violation, where instructor at university was denied professional tenure, not because of his involvement with U or because he gave testimony under Act and/or participated in Bd proceedings, but because he failed to satisfy reasonable, non-discriminatory university requirements for attaining professional tenure)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's suggestion to Ee, when Ee produced subpoena requiring his presence at Bd hearing, that Ee remember that E had told Ee *to tell the guys to stay at the machines,* held violative of 8(a)(1) but not 8(a)(4), since E thereby restrained and coerced Ee in exercise of protected right and obligation to give testimony under Act)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, from his desired second shift to less desirable day shift held violative where transfer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E violated 8(a)(1) as well as 8(a)(4) where E, in furtherance of its state civil suit against Ees, obtained alleged discriminatee's deposition concerning matters relating to E's defenses in pending Bd ULP proceeding and inquired of fellow Ee whether supervisor involved in alleged ULPs knew that Ees were trying to organize; since it could reasonably be expected that Ee would, as she did, tell alleged discriminatee of conversation with E, question had its mexus in taking of deposition resulting from filing of state proceeding which was also found unlawful herein)

3325-4200—Cont.

Earl Kuhns d/b/a Frenchy's K

Sonoma Community Press d/b/a News Herald **247 NLRB No. 148**
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

3325-4500 Attending Board proceeding

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(disciplinary warnings issued to Ees because they attended Bd hearing held unlawful disparate treatment, where E routinely gave Ees permission to leave plant during working hours to go to ct or to attend to personal business, such permission was never denied, and Ees were not warned or disciplined for requesting such permission or for leaving under such circumstances; Bd found it unnecessary to rely on Earinghouse Imports, 227 NLRB No. 1107)

Permanent Label Corporation **248 NLRB No. 021**

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

3325-7000 Giving statement to Board agent

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

3325-9200 Cooperating with and assisting Board in its proceedings

Don Pizzolato, Inc. **249 NLRB No. 136**
(discharge for participation in conference on representation ptn held at Bd office violative)

3350 FORMS OF DISCRIMINATION (SEE ALSO 524-5000)

3350-3100 Denial of vacation pay

World Wide Press, Inc. **JD-(SF)-12-80**
(refusal to give vacation pay to Ee, witness against E in prior Bd proceeding, unless she agreed in writing to return it in event Bd should determine that there was no valid contract between E and assisted U, unlawful)

3350-5600 Issuance of warning or reprimand

Ford Motor Company **251 NLRB No. 066**
(harassment of Ee and reprimand of him in retaliation for filing ULP charge, unlawful)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(refusal to grant Ee one day of leave and warning and suspending him as result of such refusal, unlawful where disciplinary measures were taken by E in retaliation for filing charge with Bd)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's threat that Ees would be severely punished if they left to attend Bd hearing on U's election ptn, and subsequent issuance of disciplinary warnings to Ees because they attended hearing, unlawful)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(warnings issued during U campaign to known leading U activists and other pro-U Ees, unlawful, where E's reasons for warnings were unpersuasive, warnings were prompted by minor and insignificant matters which would not ordinarily result in discipline and were issued to build record against Ees to support discharge on pretext, and other Ees engaged in similar conduct were not disciplined)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

3350-5800 Threat of reprisal

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E's veiled threat to husband of Ee, both of whom picketed E, with respect to losing new home husband had just bought and that E would hate them to *get hurt by all this,* unlawful, where such statements presaged E's later action of filing of civil suit against Ees, and established that true purpose behind law suit was to punish picketers for engaging in protected concerted activity and to prevent them from further asserting such rights)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E's threat to bring reprisals against Ee, clearly engaged in protected activities, which included filing of charge with Bd, unlawful)

3350-6000 Layoff

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(violation where Ee was laid off for registering complaint with Division of Human Resources and for filing deauthorization ptn with Bd)

3350-6200 Discharge or threat thereof

Hi-Craft Clothing Co. **251 NLRB No. 173**
(discharge of supervisor for threatening that he was going to file charges with NLRB because E had not given him promised bonus, violative, as E's action became known to other Ees and coerced them in exercise of their rights; moreover fact that supervisors grievance was not covered under Act immaterial, since it is Bd's function, not E's to decide whether individual is covered by Act or claim has merit)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(discharge for filing charges with Bd, unlawful)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

Don Pizzolato, Inc. **249 NLRB No. 136**
(discharge for participation in conference on representation ptn held at Bd office violative)

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and

3350-6200—Cont.

fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

Medical Mutual of Cleveland, Inc. **248 NLRB No. 074**
(although Ee was legitimately on probation for low production, his discharge was unlawful where termination occurred two days after ULP complaint had issued on Ee's charge and after she refused to assent to E's request for postponement of hearing on her cause)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**
(discharge of U steward for filing charges with the Bd against E, unlawful)

Sonoma Community Press d/b/a News Herald **247 NLRB No. 148**
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

Hotel

Magic Mountain Corporation **JD-337-80**
(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

3350-6600 Denial of promotion

Fundacion Educativa Ana G. Mendez, Inc. d/b/a Colegio Universitario Del Turabo **251 NLRB No. 203**
(no violation, where instructor at university was denied professional tenure, not because of his involvement with U or because he gave testimony under Act and/or participated in Bd proceedings, but because he failed to satisfy reasonable, non-discriminatory university requirements for attaining professional tenure)

3350-7700 Suspension

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Permanent Label Corporation **248 NLRB No. 021**

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance of which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

3350-8500 Filing civil lawsuit

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E's state civil lawsuit against alleged discriminatee, who had filed ULP charge against Ee, and against other Ees, unlawful, where lawsuit was attempt to penalize discriminatee for having filed charges with Bd and other Ees for assisting alleged discriminatee in her protest of ULP committed against her; E's lawsuit placed Ees on notice that by filing charges with Bd or making public a dispute with E, Ee subjects himself to possibility of concomitant expenses and possibility of reimbursement to Ee for legal fees and damages)

3350-8600 Threatening to depose and deposing employee-defendants in civil law suit

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(threatening to, and deposing Ees in state civil proceeding, brought against Ees by E for libel and wrongful interference, regarding Ees' U activities relevant to pending Bd proceeding, unlawful; Bd's stricter discovery procedures pre-empt state's looser standard, federal interest underlying Bd's discovery rule is much greater than that underlying state rule, and danger of interference with Bd's administration of Act by failing to limit state ct discovery procedures is much greate than potential for interference with state proceedings)

3350-8700 Altering conditions of employment

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Ford Motor Company **251 NLRB No. 066**
(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, from his desired second shift to less desirable day shift held violative where transfer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against him* held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

Earl Kuhns d/b/a Frenchy's K

3350-9400 Refusal to employ, reemploye or recall from layoff

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(refusal to rehire unlawfully discharged U adherent, unlawful, where he made application for work at plant after discharge, and supervisor made it clear to him that he was not rehired because of his U activities and because ULP charges had been filed on his behalf)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

3350-9700 Surveillance

Ford Motor Company **251 NLRB No. 066**

5000 FORMS OF DISCRIMINATION

5009 REQUIRING PHYSICAL OR PSYCHOLOGICAL EXAMINATIONS

Southern California Gas Company **251 NLRB NO. 127**
(discharge of Ee who refused to see E's doctor violative where no other Ee was ever terminated for such refusal and discharge occurred less than 2 weeks after Ee was threatened with termination for complaining to U about working conditions)

5010 ISSUANCE OF WARNING OR REPRIMAND LETTERS

Alfa Leisure, Inc. **251 NLRB No. 088**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E giving Ee written warning and 3 day suspension in reprisal for his leading role in U organizational campaign, unlawful; E's contention that Ee produced less than other department Ees was pretext for warning and suspension)

United States Postal Service **251 NLRB No. 033**
(issuance of written warnings for alleged insubordinate conduct during and after informal grievance meeting, violative, where conduct was not *opprobious* or *extreme* and Ees' continued discussion of grievance following meeting was part of *res gestae* of grievance meeting which had no consequential disruptive effect since Ees did return to work in response to direct order)

Bechtel Incorporated **248 NLRB No. 158**
(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(giving Ee reprimands and subsequent suspension for allegedly abusing restroom policy unilaterally instituted, violative)

Arvin Industries, Inc. **JD-381-80**
(issuance of written reprimands to Ees who attended U council meeting to discuss coordinated bargaining and to other Ees who attended U financial school after E had refused their request to be absent w/o pay violative, notwithstanding E's claim that such leave was not included in contractual leave provisions, since motivating reason for denying request was E's opposition to principle of coordinated bargaining; E had routinely granted leave for Ees to attend variety of U-related matters, and denying leave for Ees to attend financial school was to *shore up a defense*)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

5012 REFUSAL TO EMPLOY OR REEMPLOY

5012-3000 After discharge or layoff

Stafford Construction Co. **250 NLRB No. 128**
(refusal to reemploy U adherent because of his U activities violative)

B. N. Beard Company **248 NLRB No. 016**
(alleged breach of agreement to reinstate lawfully discharged Ee, not unlawful, where E's representative involved did not have either actual or apparent authority to bind E to such statement, and U also doubted representative's authority)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(refusal to rehire unlawfully discharged U adherents, unlawful, where numerous terminated Ees were rehired, there were numerous job vacancies and new hires during period in question, and E had no policy of automatically refusing to rehire discharged Ees)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(although striking Ees who were terminated before effective date of health care amendments and were not entitled to reinstatement as returning Ees with right of restoration of seniority and other rights and privileges arising from former relationship, ct held that E discriminated against such Ees, who had made application for new employment with E after effective date of health care amendments, by refusing to hire the former Ees because of their prior concerted U activity)

5012-3800 After filing of grievance

Albertson's Inc. **JD-(SF)-104-80**
(no violation, where E would have faced problems trying at another store to hire Ee who had filed grievance, because of E's full work force)

5012-3900 After voluntary quit

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

Tartan Marine Company **247 NLRB No. 073**
(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

5012-4000 Discriminatory hiring practice (See also Union Security Requirements 524-5090)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E's refusal to hire individual, unlawful, since rejection based on fact he was U apprentice that U's business agent had requested E hire; contention that E did not discriminate because 10 days later he hired another Ee with same name, rejected, in view of E questioning latter individual before hiring and ascertaining he was not U member is evidence that E knew hired Ee was not same individual business agent requested)

Central Transport, Inc. **247 NLRB No. 198**
(refusal to hire applicant because he previously worked for organized E, violative)

Galax Apparel Corporation **247 NLRB No. 026**
(refusal to rehire Ees, violative, where E was prepared to rehire Ees as its records indicated, but retracted employment offer after receipt of U telegram informing E of organizing campaign and that members of Ees' family were part of U organizing committee)

5012-7000 Because of known union activities

Franklin Fouts, d/b/a B

Cedar Coal Company **251 NLRB No. 081**
(refusal to rehire former Ee who had been militant U supporter, violative, where refusal based on E's fear that E would cause *trouble* for it)

Stafford Construction Co. **250 NLRB No. 128**

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

Tartan Marine Company **247 NLRB No. 073**
(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

Avon Mirror

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

Reed Equipment, Inc. **JD-816-79**
(no violation where E refused to hire 15 applicants not because, as asserted, it was impelled by knowledge that they were members of U and it's desire to avoid dealing with such U, but rather because none met E's established qualifications or standards)

Beech Aircraft Corporation **JD-813-79 (no violation where E refused to hire applicant not because, as contended, she had joined strike against previous E but because of her adverse medical history)**

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(although striking Ees who were terminated before effective date of health care amendments and were not entitled to reinstatement as returning Ees with right of restoration of seniority and other rights and privileges arising from former relationship, ct held that E discriminated against such Ees, who had made application for new employment with E after effective date of health care amendments, by refusing to hire the former Ees because of their prior concerted U activity)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(when plant director offered two U members jobs shortly after interview and subsequently, upon discovering that they were U members, informed them that he would not know whether he could hire them but would contact them that evening after he had discussed their application with chief engineer, plant director's failure to call U members thereafter regarding employment at E, violative)

5012-7600 Refusal to hire predecessor's employees

Vantage Petroleum Corp. **247 NLRB No. 202**
(where E obtained state contract to operate gas stations previously managed by two companies and decided, before being approached by station attendants then working at the gas stations, that it would hire its own Ees complements rather than Ees then working at gas stations and that it would pay Ees according to its own wage structure starting from minimum wage, E's subsequent failure to hire former Ees of its predecessor gas companies who were represented by U, not violative, since E was not successor E to any of the gas companies and its actions did not result from U animus)

5012-8000 Use of application form requiring disclosure of union membership

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(where employment agency used application forms containing questions about applicant's U activities, E violated Act when it took no action to alleviate impression these forms made on applicants)

5017 Imposition of illegal conditions of employment (See also 524-5090)

5017-2800 Abandonment of union activities or membership

Stafford Construction Co. **250 NLRB No. 128**

5017-3500 Prematurely recognized union

Baine Service Systems, Inc. **248 NLRB No. 087**
(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

5020 HARASSMENT OF UNION ADHERENTS

5020-3300 By employees

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of U committeemen because other Ees would not work with them, violative)

5023 IMPOSITION OF DISCRIMINATORY WORKING CONDITIONS

5023-1200 Less desirable job or work shifts

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purposes was to discourage Ee so she would quit)

Cable Vision, Inc. **249 NLRB No. 062**
(assignment to stand-by position of known U activist hired as installer with understanding that as installer he would not have to work standby position held unlawful as discriminatory assignment and constructive discharge where E knew that assignment would interfere with Ee's outside work and E quit as result

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

Earl Kuhns d/b/a Frenchy's K

General Warehouse Corp. **247 NLRB No. 142**
(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

General Meats, Inc. **247 NLRB No. 153**
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

5023-1900 Closer supervision

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

General Meats, Inc. **247 NLRB No. 153**
(having special sign-in-out sheet whenever Ee left for nonwork purposes)

5023-3300 More onerous conditions

Earl Kuhns d/b/a Frenchy's K

Sherwood-Trimble Medical Building **247 NLRB No. 160**
(requiring U adherent to take breaks only at scheduled time, to record what she did in short segments, and restricting U adherent to her desk and extending restriction to others to disguise motivation, unlawful)

5029 ACTIONS AFFECTING EMPLOYMENT CONDITIONS

5029-1200 Renumeration and benefits

5029-1211 change in pay day or hour

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

5029-1225 Delay or denial of increase

United Services For The Handicapped **251 NLRB No. 117**

Northern Telecom, Inc. **250 NLRB No. 085**
(denial of merit increase)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

Olympic Medical Corporation **250 NLRB No. 011**
(withholding wage increase and instituting change in wage policies retroactively, violative in view of absence of business justification and presence of other ULP)

Olympic Medical Corporation **250 NLRB No. 011**
(withholding periodic as well as retroactive wage increase, for purpose of inducing Ees to vote against U, violative)

Conagra, Inc. **248 NLRB No. 085**
(failure to grant wage increase during U campaign, not unlawful, where due to failure of personnel manager to make wage survey; notwithstanding statements of E that denial of increase was due to U campaign)

Service Garage, Inc. **247 NLRB No. 115**
(denial of announced wage increase because of Ees' U activities violative; moreover, fact that no past practice existed for granting wage increases immaterial)

Tartan Marine Company **247 NLRB No. 073**
(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(E's 3-week suspension of salary review w/o consulting with U, unlawful and though inconsequential, it was distinguishable from violations where Bd applied *de minimis* doctrine)

5029-1231 Granting of wage increase

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected, where U activity was taking place at only small part of E's enterprises)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(payment to Ees at higher wage rate than rate negotiated, unlawful)

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

5029-1237 Denial of termination benefits

Clark

5029-1259 Discriminatory maintenance of contract clause

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(refusal to pay nonU Ees contractual wage and accord them contractual benefits to which they were entitled as members of bargaining unit covered by contract, unlawful)

5029-1275 Reduction

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that E's treatment of new non-U Ees hired to replace strikers who had refused E's offer of reinstatement was neither discriminatory nor anti-U, where E applied to new Ees wage provisions of existing contract; E's failure to reduce their wages, while having U agree to reduction in wages because of E's precarious financial situation, was justified by fact that exclusion of new Ees from contract's fringe benefits gave strikers compensation at higher rate than new Ees when hourly fringe benefits rates are combined with hourly contract rates)

Han-Dee Pak, Inc. **249 NLRB No. 107**

5029-1275—Cont.

(notwithstanding Ees subsequent unlawful discharge, E's action of reclassifying Ee at lesser salary not unlawful absent evidence of discriminatory motivation and connection between wage reduction and Ee's U activities)

International Business Systems, Inc. **247 NLRB No. 102**
(violation where E reduced Christmas bonus by half because of Ees' U activity and not because available cash was insufficient, as asserted)

5029-1279 Denial of holiday pay

Lyman Steel Company **249 NLRB No. 040**
(withholding holiday pay from U adherent who had switched his allegiance from favored U to petitioner held violative where E had threatened Ee with punishment for supporting petitioner)

5029-1280 Denial of overtime pay

Redman Construction Company, Inc. **JD-(SF)-105-80**
(discharge of Ee who sought to implement contractual benefits regarding overtime pay violative irrespective of whether asserted claims are found meritorious)

5029-1283 Denial of vacation Pay

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

World Wide Press, Inc. **JD-(SF)-12-80**
(refusal to give vacation pay to Ee, witness against E in prior Bd proceeding, unless she agreed in writing to return it in event Bd should determine that there was no valid contract between E and assisted U, unlawful)

5029-1287 Change in basis of payment

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

5029-2500 Hours

5029-2525 Change in work schedule

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**
(requiring Ee believed to be U leader to return directly after lunch to airfield where he had no duties between 1:30 and 4:30 rather than to work in flight kitchen violative, since change in schedule was designed to keep him from having contact with Ees in flight kitchen)

Earl Kuhns d/b/a Frenchy's K

Retailer's Coupon Redemption Co., Inc. **JD-194-80**
(violation where E discontinued flexible work hours of U leaders, and sympathizers, while permitting other Ees to continue working flexible hours)

Southwest Research Institute
JD(SF)-276-79
(discontinuation of practice of accommodating work schedules of U adherents to their school schedules in accordance with its educational advancement program, unlawful)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(E acceding to U's termination of temporary shift assignment, not unlawful, notwithstanding termination violative of 8(b)(1)(A) and 8(b)(2) where E's action was not based on discriminatory motive, but rather on business justification of fear of legal or economic action; further, E did not know U had breached duty of fair R)

5029-2550 Reduction

Century Moving

O.K. Machine

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(reduction of hours to punish Ees for known support of one of two Us conducting organizing campaign where E favored and supported rival U, unlawful)

Earl Kuhns d/b/a Frenchy's K

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(reduction of hours of leading U advocate, part time Ee with good employment record, in order to give less senior Ee *a few hours* held violative where E's action against seniority was contrary to its usual practice and was taken against Ee to *straighten him up*)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(reducing hours immediately following U bargaining demand and *until the union matter cleared up*, violative, since the changes were instituted in response to Ees' U activity)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(reduction in two Ees' scheduled hours for U activities and for appearing in U's behalf at hearing, respectively, unlawful; fact one Ee increased hours actually worked by own efforts, no defense)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(violation, where E changed work schedule and reduced work hours of U activist)

5029-3700 Bonuses

5029-3733 Discrimination in regard to

Florida Steel Corporation **249 NLRB No. 018**
(E's denying accumulation of *time bank* credits to Ees who served on U negotiating committee for time they spent in negotiations which were held during working hours not violative, where attendance at bargaining negotiations did not fall w/i exceptions set forth to E's requirements that Ees were required to be present for all regularly scheduled hours during workweek in order to accrue time bank credit, absence to participate in bargaining was voluntary since E offered to meet outside working hours, and there was contention of discriminatory motivation in denial of credit)

5029-3767 Withholding of

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E discontinued Ee bonus payments and thereafter refused to pay Ees the bonus which had accrued prior to discontinuation in reprisal for Ees' voting for U)

5029-4300 Vacation pay, policy or practice

General Time Corporation, Westclox Military Products Division **249 NLRB No. 178**
(E's failure to pay accrued vacation pay to striking Ees violative where no business justification existed)

Borden, Inc., Borden Chemical Division **248 NLRB No. 060**
(on ct remand, Bd held E's rejection of U's request at outset of strike to pay accrued vacation benefits to qualified Ees, unlawful; E showed its motive by stating that it would not pay vacation pay to strikers, and evidence of past practice indicated that purpose of contractual limitations on vacation pay were for purpose of assuring that time off was taken instead of being foregone for extra pay)

5029-4500 Withdrawal of privileges

Henry Vogt Machine Company **251 NLRB No. 040**
(withdrawal of cafeteria privileges after Ees chose U representative found inherently discriminatory since it contained clear and dramatic message for Ees who had chosen representation and for the remaining unrepresented Ees)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(singling out 2 members of U organizing committee for admonition against using telephone for personal business, violative where there was no evidence to show that any problem existed which warranted issuance of warning)

5029-5000 Change in business methods or operations

5029-5037 Transfer of unit work

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. 098**
(refusal to transfer unit Ees to new location, not violative, since change in original bargaining unit was so fundamental and diverse that new location was not integral part of existing unit at original location)

St. Regis Paper Company **247 NLRB No. 105**
(transferring work from one of E's plants to another of E's plants in another city to eliminate overtime, subject of an Ees' grievance, held violative, since grievance was protected activity)

J. H. Block

5029-5050 Subcontracting

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(unionized corporation's layoff of its Ees and subcontracting of their work to its nonU *alter ego* sole proprietorship, unlawful)

Carbonex Coal Company **248 NLRB No. 107**
(E's subcontracting of 100 percent of its hauling operation which resulted in layoff of 2 Ees, violative)

C-F Air Freight, Inc. **247 NLRB No. 60**
(closing of facility and subcontracting of Ee's work, unlawful, where E's defense that financial losses at facility necessitated such action, unlawful; it

5029-5050—Cont.

was fallacious to say, on one hand, that facility was such an economic disaster as to require its closing and, on the other hand, to subcontract its work; subcontractor did not prevent E from suffering financial losses; there was no dinimution of work after subcontractor began performing it; and subcontractor's work force was substantially the same)

Atlan Inc. **JD-890-79**
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5029-5075 Partial closing of business

C

5029-5087 Reorganization of work system

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

Suburban Ford, Inc. **248 NLRB No. 051**
(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(posting notices, immediately following U bargaining demand, that Ee drivers were not to punch in until their trucks were full loaded, and, upon returning from a run, were forbidden from punching in until their trucks had been re-loaded, violative; radical change in past practice was announced in response to Ees' U activity)

5029-6200 **Discontinuance of employee benefits**

5029-6213 Use of subsidized cafeteria

Henry Vogt Machine Company **251 NLRB No. 040**
(abrupt unilateral withdrawal of privilege of using E-subsidized cafeteria after Ees chose U representation, unlawful)

5029-6241 Paid meal period

Cardinal Heating and Cooling, Inc. **JD-835-79**
(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

5029-6287 Disadvantageous change in conditions connected with job

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(supevisor's change in attitude toward Ee after latter became known as U adherent, resulting in Ee's loss of overtime work and less remunerative work during his regular shift, unlawful)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(assignment of Ee to department where she was alone with no work, violative, where assignment was motivated by Ee's U activities and in order to isolate her from other Ees)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(assignment of U adherents to take inventory in isolated room, violative, where E's motive was to isolate U supporters from other Ees)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(E acceding to U's termination of temporary shift assignment, not unlawful, notwithstanding termination violative of 8(b)(1)(A) and 8(b)(2) where E's action was not based on discriminatory motive, but rather on business justification of fear of legal or economic action; further, E did not know U had breached duty of fair R)

5029-6293 Use of company car or facilities

Cardinal Heating and Cooling, Inc. **JD-835-79**
(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

5029-6800 **Participation in discriminatory administration of insurance, pension, and other benefit plans**

B. G. Costich

5029-7500 **Discipline**

Weyerhaeuser Company **251 NLRB No. 097**
(warning and suspension of U adherent for returning late from his break and eating at his work station, not unlawful, where E issued warnings long prior to U campaign and there was no conclusive evidence showing that such discipline was related to any *crack down* on Ees as result of U campaign)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(warning given to Ee over lateness, not violative, where alleged hostility against Ee arose from incident too remote in time (2 months) to have been significant factor)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(charging Ees with unexcused absences because of their refusal to cross picket line of U representing other Ees at E's plant, unlawful, where E was aware that Ees were engaged in honoring picket line and that its practice of charging Ees with unexcused absences was being challenged as unlawful before Bd)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(dismissals and other disciplinary action taken against U supporters for various asserted reasons, not unlawful, where Ees' U activities were slight and took place long before events leading to disciplinary action occurred, and E's treatment of Ees was in accordance with its policy and was not unreasonable in the circumstances)

Northern Telecom, Inc. v. N.L.R.B. **618 F.2d 421 (C.A. 6, 1980)**
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

5029-7533 Reprimand or warning

Weyerhaeuser Company **251 NLRB No. 097**
(warning Ees during U campaign about being away from work stations based on more stringent enforcement of rules, violative)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(E's system of written warnings issued to ex-strikers, implemented until there were no longer any ex-strikers on payroll, unlawful, where E's action was result of change in warning procedure calculated to harass and provide grounds for discharging ex-strikers who were recipients of unprecedently large number and discrepant proportion of warnings)

IML Freight, Inc. **249 NLRB No. 111**
(warning Ee for refusing work assignment, not unlawful, where GC failed to establish that warning was motivated by Ee's report to health authorities; Ee did not assert illness until after refusing to do cleanup job)

IML Freight, Inc. **249 NLRB No. 111**
(warning letter to U stewards for participating in inpromptu meeting during work time to discuss grievance, not unlawful, where warning dealt solely with group meeting during work time in violation of contract and not about grievance being discussed of which E had no knowledge)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(issuance of warnings to U activist, unlawful in view of unreasonable and implausible explanation by E)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(reprimand and discipline of Ee on two separate occasions held not unlawfully motivated by desire to retaliate against Ee for his efforts through U on behalf of fellow Ee, where reliability of Ee's recollection of events was suspect, valid basis for reprimands existed, and circumstances upon which reprimands and discharges were based did not support conclusion that they were based on unlawful reasons)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

5029-8900 **Transfer**

Hedison Manufacturing Company **249 NLRB No. 096**

5029-8900—Cont.

(E's conduct in imposing conditions on transfer to other departments of press department Ees selected for layoff, whereby Ees would be permanently transferred, would forfeit seniority, and receive reduction in pay, unlawful, where such action was not in accord with E's past practice, E displayed pervasive U animus and had special awareness of U activity in press department, imposition of conditions was not based on economic considerations but on combating Ees' U activity, and E did not treat similarly situated Ees in another department in same manner)

Hedison Manufacturing Company **249 NLRB No. 096**
(E's asserted reasons for imposing allegedly discriminatory conditions on transfer of Ees to other departments in lieu of laying them off, rejected, where there was no evidence to justify E's refusal, purportedly because of retraining expenses, to allow transferred Ees to return to their department when work became available; E's explanation for reducing transferees' wages was unconvincing since transferees, experienced in other work in plant, were to be paid as newly-hired Ees; and E did not impose any conditions on similar transfers involving Ees in another department)

Detroit Diesel Allison Division, General Motors Corporation **249 NLRB No. 089**
(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

Earl Kuhns d/b/a Frenchy's K

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(denial of U adherent's request for transfer to another job, unlawful, where E kept Ee in job, which was beyond his capabilities, until such time as it could discharge him for low production, and finding herein is supported by discriminatory treatment of Ee upon his request for reemployment after his discharge)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(temporary transfer of Ee to another of E's locations because Ee was uniquely qualified to perform project, because Ee was more readily available for temporary assignment, and because Ee would have less travel time to new location, not unlawful, notwithstanding GC's contention that E transferred Ee to neutralize his continued activity on U's behalf)

Georgetown Steel Corporation **JD-819-79**
(transfer of truck drivers into labor pool at lower pay held not unlawful since transfer was for economic reasons and not for Ees' U activities whereby they invoked U assistance to get them reinstated to their former jobs; E advanced plausible explanation for cost cutting in trucking department, there was no evidence that E had grudge against Ees or any U animus; instead E had good working relationship with U, and many Ees complained directly to U about E w/o refusals)

5029-9400 Refusal to grant overtime

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(supevisor's change in attitude toward Ee after latter became known as U adherent, resulting in Ee's loss of overtime work and less remunerative work during his regular shift, unlawful)

Lyman Steel Company **249 NLRB No. 040**
(depriving U advocate of overtime assertedly because his machine had suffered oil leak held violative where other machine operators had suffered oil leaks earlier w/o repercussions from E)

5029-9500 Discontinuance or reduction of washup time

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

5029-9600 Requiring use of timeclock

Weyerhaeuser Company **251 NLRB No. 097**
(installation and required utilization of timeclock, not unlawful, where such change was based on desire of Ees initially expressed prior to U campaign and later voted on by Ees)

5029-9700 Change in job duties

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(reassignment and subsequent layoff of Ee, unlawful, where at U meeting Ee asked whether contract provisions calling for overtime equalization pay by departments or classifications applied to her lab job, and action taken against Ee occurred because she raised such issue which offended chief steward whose roommate was Ee's coworker in lab and was beneficiary of favorable discrimination by receiving overtime pay under same conditions that overtime pay was denied to Ee)

5034 ACTIONS AFFECTING SENIORITY

5034-6700 Discriminatory seniority policy

5034-6750 Superseniority

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

5040 REFUSAL TO PROMOTE

Coating Products, Inc. **251 NLRB No. 170**
(refusal to promote Ee to leadman where he was already performing work until after U campaign violative)

Ford Motor Company **251 NLRB No. 066**
(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(violation where E refused to promote U activist *as long as she was engaged in organizational activities for the Union*)

5050 Demotion

Hall of Mississippi, Inc. **249 NLRB No. 119**
(demotion of leadperson because of his U activities and as part of E's efforts to chill U activity in plant, violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(although record did not show that Ee with less seniority than discriminatee remained in department, Bd found demotion unlawful where timing of demotion, following interrogation about Ee's pro-U sentiments, coupled with E's failure to introduce evidence to negate inference of unlawful motivation, supported such finding)

5053 Transfer

International Business Systems, Inc. **247 NLRB No. 102**
(E's listing Ee, who was known to be active U supporter, in nonlithographic department should it be determined that lithographic unit petitioned for was appropriate, not violative of Sec. 8(a)(3); nor change of job duties for discriminatory reasons, even if Ee's U activity might have affected E's determination as to which department to place him)

5056 Lockout

5056-0100 Generally

5056-0175 Employer's motivation or intention

Century Moving

5059 SHUTDOWN OR TERMINATION OF OPERATIONS

Franklin Fouts, d/b/a B

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(shut down of job for remainder of day following E's vehemently stated opposition to U after U claimed majority, where there was no explanation of necessity for shutdown, unlawful; neither E's asserted ignorance of law nor fact all Ees included in shut down sustained as defenses)

C-F Air Freight, Inc. **247 NLRB No. 060**
(closing of facility and subcontracting of Ee's work, unlawful, where E's defense that financial losses at facility necessitated such action, unlawful; it was fallacious to say, on one hand, that facility was such an economic disaster as to require its closing and, on the other hand, to subcontract its work; subcontractor did not prevent E from suffering financial losses; there was no diminution of work after subcontractor began performing it; and subcontractor's work force was substantially the same)

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Atlan Inc. **JD-890-79**
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5060 RELOCATION OF OPERATIONS

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(transfer of Ees from E to E's alter ego, unlawful, since E's purpose for transfer was to avoid its collective bargaining obligation to Ees represented by U)

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. 098**
(refusal to transfer unit Ees to new location, not violative, since change in original bargaining unit was so fundamental and diverse that new location was not integral part of existing unit at original location)

5062 SUSPENSION

Alfa Leisure, Inc. **251 NLRB No. 088**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

Savannah Wholesale Company **251 NLRB No. 087**
(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of known U adherents who left work contrary to revised notice of vacation schedule, unlawful, where other Ees similarly absent were not warned or disciplined for their infraction of E's orders)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of Ee for engaging in *horse play* with air hose, which was potentially dangerous to fellow Ee, not unlawful, where E investigated incident, thereupon reduced discharge to suspension, and exercised reasonable exercise of its business judgment in maintaining proper discipline with due regard for safety of its Ees)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of known U adherents for absence from their work area, unlawful, where they were absent no longer than 10 minutes during their break period, their casual greeting of other Ees in another department did not constitute a work interruption, and no other Ee had been disciplined for asserted reason)

Carterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) 8250 NLRB 089
(suspension of Ees for 60 days for participation in ULP strike, violative)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(suspension of formerly striking Ee assertedly because of damage to E's rental vehicle due to Ee's improper checking out of equipment before delivery to customer, unlawful, in view of E's animus toward ex-strikers, timing of suspension to Ee's activities as steward, absence of evidence of negligence on Ee's part and of precedent for punishment herein, E's predisposition to be punitive, and E's failure to place in evidence any written statement attributable to customer)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, intefered with foreman's job performance)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, interfered with foreman's job performance)

The Davis Company **249 NLRB No. 068**
(suspension of U stewards for filing OSHA C and *too many nuisance grievances*, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspension of U committeeman for allegedly stealing customer receipts, violative, when made w/o prior warning and Ee told that *you have a lawyer* referring to U's counsel)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

Pay 'N Save Corporation **247 NLRB No. 184**
(suspension and discharge of Ees for wearing U buttons on their store jackets, unlawful, since right to wear buttons is legitimate form of U activity, and there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

CTS Keene, Inc. **247 NLRB No. 141**
(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(giving Ee reprimands and subsequent suspension for allegedly abusing restroom policy unilaterally instituted, violative)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(suspension of driver, who had been involved in several accidents, held in reprisal for his U activities where other drivers had more serious accidents and were not disciplined, suspension closely followed Ee's request to attend Bd hearing and was in middle of number of discriminatory discharges, and latest accident was seized upon to disguise E's real motive in suspending Ee)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(suspension of U adherent assertedly because he did not bring proper tool to work, unlawful, where incident was contrived to punish Ee for his recent U activity in order to provide record of unsatisfactory performance preparatory to Ee's discharge)

Lester Industries, Inc. **JD-97-80**
(suspension of chief U protagonist purportedly for threatening anti-U fellow Ee, unlawful, where E seized upon anti-U Ee's belated, implausible account of purported threat as pretext for suspension of Ee for engaging in U organizing and protected concerted activity)

Voss Steel Corporation **JD-216-80**
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(suspension of Ees for refusing to perform job assignment for safety reasons, not unlawful, where ALJ's finding to the contrary lacked factual basis, and there was no contention that suspensions were so *inherently destructive of Ee interests* that anti-U motive is irrelevant)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

5067 LAYOFF

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had,

5067—Cont.

meanwhile, installed new type of machine requiring different skills to operate)

5067-0100 Generally

Hedison Manufacturing Company **249 NLRB No. 096**
(laid off Ees who were not affirmatively shown to be U supporters held discriminated against as if they had been U supporters, where they were caught up in their fellow Ees' U adherence and were victims of E's effort to crush U)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(layoffs not unlawful where E had incurred substantial losses and facility had been listed for sale before onset of U activity; and site of new operation was not ready for use at time of closing)

5067-1200 For union or other protected activity

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(layoff of helpers, unlawful since it was necessitated by discriminatiory discharge of U leaders they helped)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**
(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Campo Slacks, Inc. and J

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because they devoted too much time in repairing E's vehicle as result of which customer was not serviced, unlawful, where Ees were known active U supporters, they had attended U meeting shortly before layoff, and E had profound U animus)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because E lost contract with major customer, unlawful, where E failed to explain circumstances involved and to mention layoffs or any likelihood of loss of contract to Ees prior to layoff, and supervisors admitted to Ees that E would rather close operation than deal with U)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(shut down of job for remainder of day following E's vehemently stated opposition to U after U claimed majority, where there was no explanation of necessity for shutdown, unlawful; neither E's asserted ignorance of law nor fact all Ees included in shut down sustained as defenses)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(layoff of known U adherent, assertedly because of seasonal decline in business and lack of work, unlawful, where E's U animus was evidenced by statement that it was against U, E engaged in coercive unlawful conduct before layoff, Ee was E's most senior Ee and had never been laid off during previous slow seasons, and, unlike other Ees selected for layoff, Ee was not asked by E about his slow season plans)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

Smedberg Machine

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(permanent layoff of U adherent, unlawful, where layoff was effected in complete disregard of E's layoff, seniority, and bumping policies; despite job vacancies and new hires, Ee was never recalled to fill vacancies or other jobs which he could handle; and E treated Ee differently than other laid off Ees by contesting Ee's unemployment compensation)

Schneider, Inc. **247 NLRB No. 071**
(layoff of Ee for activities whereby he persistently attempted to obtain U membership for other nonmember Ees and himself, unlawful)

Eastern Engineering

Vulcan Fuel Corporation **JD-842-79**
(laying off two Ees with least seniority, violative, where economic reasons were found pretextual since lay-offs occurred, contrary to past practice, on eve of busy season; further, E saw one Ee as source of trouble where second to least seniority, proclaimed himself elevated to steward; inference drawn that Ee with least seniority was laid off to get rid of self-proclaimed steward)

5067-1900 For grievance participation or activity

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(reassignment and subsequent layoff of Ee, unlawful, where at U meeting Ee asked whether contract provisions calling for overtime equalization pay by departments or classifications applied to her lab job, and action taken against Ee occurred because she raised such issue which offended chief steward whose roommate was Ee's coworker in lab and was beneficiary of favorable discrimination by receiving overtime pay under same conditions that overtime pay was denied to Ee)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

5067-2500 To avoid dealing with union

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(unionized corporation's layoff of its Ees and subcontracting of their work to its nonU *alter ego* sole proprietorship, unlawful)

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

Atlan Inc. **JD-890-79**
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5067-3700 Discrimination in selection in economic lay-off

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(selection of Ees for economic layoff, unlawful where Ees were selected out of seniority, supervisor and general foreman told Ees that U supporters would not be called back to work and that reason for layoff was to get rid of people who were trying to organize U, E hired new Ees before offering Ees on layoff opportunity to be employed, Ees recalled were as new Ees w/o their prior benefits and for probationary period, and E hired new Ees while Ees were still on layoff)

K

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(selection of U adherent for economic layoff, unlawful, since motivated by adherent's U activities where previous unlawful warning letters were factor,

5067-3700—Cont.

E's owner had suggested to adherent she might be happier working elsewhere and offered her severance pay to seek other employment)

N.L.R.B. v. Triangle Sheet Metal Works, Inc. **607 F.2d 998(T) (C.A. 2, 1979)**
(layoff of valuable Ee who was campaign manager for candidate for U president whom E opposed violative notwithstanding economic necessity for layoff since Ee's name not on original layoff list but his name was substituted thereon by president)

5067-6200 Consequence of employer's unlawful transfer of work

St. Regis Paper Company **247 NLRB No. 105**
(violative)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(layoff of Ees at company covered by contract rather than those Ees that E thought were not covered at another company following shift of work from one company to other unlawful, where both companies constituted single E and Ees of both companies constituted single appropriate unit)

5067-8700 To discourage support for disfavored union

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(layoff of Ees, unlawful, notwithstanding contention layoff due to problems with production process, as layoffs took place w/o regard to seniority after Ees had rejected E's contract proposals to Ee committee and E gained knowledge of Ees' support of outside U, production problems had existed for some weeks prior to layoffs and E hired new Ees during period; further, Ees were recalled day after committee signed contract with E)

5073 Discharge

5073-0100 Generally

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(proper test in determining whether discharge of Ee is ULP is whether anti-U animus was moving cause, and not whether discharge is only partially motivated by anti-U animus; to give rise to ULP *but-for* cause of discharge is required)

5073-1100 What constitutes discharge

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(Ees who concertedly went out on strike in protest of discharge of U adherent and in protest over meeting in which E laid down working conditions to be followed on job held not to have been discharged, where none of the Ees stated that they had quit and were not told at any time that they were terminated, and E believed Ees quit when they walked out w/o any prior notice and, upon their return, E made conciliatory moves and stated that things would change)

5073-1101 Generally

Sentry Investigation Corp. **249 NLRB No. 130**
(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge even in absence of words; where such can be reasonably inferred from circumstances)*

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

5073-1114 Constructive discharge

Coating Products, Inc. **251 NLRB No. 170**
(transfer of U adherent to less desireable job on night shift which E knew he could not take because Ee already worked at another night job, violative)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(refusing to allow to return to work Ees who had walked off job to protest reduction in piecework rate violative and in effect constructive discharge)

La Habra Dodge, Inc. **251 NLRB No. 001**
(held voluntary quit and not constructive discharge notwithstanding painter's helper in accordance with industry custom assumed he too was terminated when E discriminatorily discharged painter with whom he worked as E never discharged helper and E was his E and not painter)

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(E's insistance that U adherent with back injury had quit his job rejected and held constructive discharge where Ee was injured on job, notified E, saw physician and received workman's compensation)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**
(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(unlawful constructive discharge not established in absence of intolerable working conditions and unlawful motive where, although Ee may have been given less overtime and less desirable work, her personal problems triggered her sudden decision to quit)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(Ee's quiting held unlawful constructive discharge where E induced Ee to quit because of her striking and U activity subsequent to her reinstatement; harassment, vandalism, and obscenities inflicted upon Ee had management sanction and were meant to punish Ee for striking and other U activity and were so offensive and recurring as to make Ee's work situation intolerable)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(violation, where E's owner vehemently denounced U after U claimed majority and then shut down job, informed Ees that anyone who wanted to stay with him could contact him that night and at same meeting asked which Ees had signed cards for U, since Ees reasonably lead to believe that they were faced with choice between continued employment w/o U or no employment at all)

Don Pizzolato, Inc. **249 NLRB No. 136**
(Ee offered reinstatement after discriminatory layoff to inferior position constructively discharged)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(violation where E provoked U adherent to quit by assigning her to department where she was isolated from other Ees and kept idle for lack of work)

Cable Vision, Inc. **249 NLRB No. 062**
(assignment to stand-by position of known U activist hired as installer with understanding that as installer he would not have to work standby position held unlawful as discriminatory assignment and constructive discharge where E knew that assignment would interfere with Ee's outside work and E quit as result

Lyman Steel Company **249 NLRB No. 040**
(U adherent's quitting job, not only because E denied Ee's vacation request, but also because of E's implicit rejection of Ee's plea for security at his work station, held *constructive discharge*)

B. N. Beard Company **248 NLRB No. 016**
(constructive discharge of Ee to whom E offered wage rate lower than that provided for in U contract, unlawful, where Ee quit rather than relinquish statutory right to be paid in accordance with contract; fact that Ee intended to leave E's employment in future is no defense where decision to quit was hastened by his being compelled to accept lower wage rate contrary to his statutory right)

General Meats, Inc. **247 NLRB No. 153**
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

Sullivan Transfer Co. **247 NLRB No. 117**
(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

Leyendecker Paving, Inc. **247 NLRB No. 010**
(absent evidence that Ee had specific function in E's employ, assignment to different work because of which Ee quit did not constitute unlawful constructive discharge, where assignment was not caused by Ee's U activities of which E had no knowledge)

Magic Mountain Corporation **JD-337-80**
(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(strikers who failed to return to their jobs by deadline set by E and who were replaced by E held to have been *constructively* discharged)

Albertson's Inc. **JD-(SF)-104-80**
(no constructive discharge, in the absence of an alleged calculated plan of harassment to cause Ee to quit)

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Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(constructive discharge by E's creation of intolerable working conditions when it ceased paying contractual benefits; conduct was inherently destructinve of Ee rights)

5073-1117 Discharge for cause

Bullock's **251 NLRB No. 082**
(discharge of Ee assertedly for demoralizing E's personnel by having copies of performance reviews in her possession and discussing them with fellow Ees, not unlawful, where dischargee surreptitiously and wrongfully obtained and copied fellow Ee's review, disseminated reviews' contents to another Ee, advising latter that her review was unfavorable in comparison with others, and dischargee's remarks leading Ee to believe that her job could be in a precarious position support conclusion that dischargee's conduct had disruptive and demoralizing effect on E's personnel)

Hotel St. Moritz, Inc. **251 NLRB No. 015**
(no violation where E filed charges seeking discharge of hotel housemen's U delegate because of his threats and derogatory remarks to E when latter questioned his delegate status at E's meeting with lobby porter concerning porter's changing from membership in his own U to membership in delegate's U; accepting, *arguendo*, E's obligation to recognize and deal with delegate as representative of porter, who belonged to another U, delegate's actions were nevertheless so opprobrious as to render his conduct unprotected)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(physical assault upon supervisor held cause for discharge, where discharge was immediate and spontaneous reaction to attack, a normal reaction of supevisor with such authority, regardless of aggressor's U sympathies)

Central Freight Lines, Inc. **250 NLRB No. 063**
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Neptune Waterbeds, Inc. **249 NLRB No. 168**
(no violation where active U adherent was discharged for solicitation on E's time, violence toward other Ees, and lateness; although other Ees' work records showed deficiencies, no other Ee was shown to have work-related problems in as many areas as dischargee)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(discharge of U advocate for falsifying work order 4 days prior to his termination, not violative notwithstanding Ee was discharged on same day he solicited for U; no evidence in record that anyone responsible for Ee's discharge knew that he engaged in U activity)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(no violation by discharge of two U adherents in pre-election period where discharge of one was for charging parts and labor on E's credit far in excess of amounts usually permitted and then failing to pay for them, and discharge of the other was for overordering parts for E and for covering up first Ee's overextension of credit)

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**
(discharge of known U adherent for refusals to work overtime, insubordination, and delaying flight, not unlawful in light of cumulative infractions and progressive discipline)

Schwebel Baking Company **249 NLRB No. 005**
(termination of U steward held lawful for refusal of proper order to return to work during walkout over firing of fellow worker, rather than for his handling of discharged fellow worker's grievance as alleged)

Schwebel Baking Company **249 NLRB No. 005**
(discharge of U steward held lawful for assault on company official, rather than, as alleged. for carrying out his duties as U steward)

Bechtel Incorporated **248 NLRB No. 158**
(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Landmark Beef Processors, Inc. **248 NLRB No. 041**
(discharge of lead person, who was U advocate, for single unexcused absence held not violative where E had demonstrated no anti-U animus and Ee held position of some responsibility for which she received higher pay than others)

North Cambria Fuel Company, Inc. **247 NLRB No. 176**
(termination of striking Ees for serious misconduct, not unlawful, where E reasonably believed that strikers were guilty of improper conduct in view of their gathering outside E's gates in contempt of ct injunction, damage done to suppliers' trucks by rocks thrown by Ees and subsequent guilty pleas in ct to charge of disorderly conduct)

International Medication Systems, Ltd. **247 NLRB No. 190**
(discharge held for cause where Ee was not exemplary Ee even though timing of discharge, one month after Ee testified adversely to E in Bd proceeding, may appear suspicious; mere suspicion cannot substitute for ULP)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(dismissals and other disciplinary action taken against U supporters for various asserted reasons, not unlawful, where Ees' U activities were slight and took place long before events leading to disciplinary action occurred, and E's treatment of Ees was in accordance with its policy and was not unreasonable in the circumstances)

Keister Coal Company, Inc. **247 NLRB No. 049**
(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(reprimand and discipline of Ee on two separate occasions held not unlawfully motivated by desire to retaliate against Ee for his efforts through U on behalf of fellow Ee, where reliability of Ee's recollection of events was suspect, valid basis for reprimands existed, and circumstances upon which reprimands and discharges were based did not support conclusion that they were based on unlawful reasons)

Neckover Trailer Manufacturing Company **JD-256-80**
(discharge for cause in view of Ee's attempted fraud of work time; blatant infraction of rule regarding Ees' use of scrap metal, both as it related to use of material for own purposes and taking of material from plant; and Ee's threats against supervisors)

Cedarwood Care Center **JD-(SF)-315-79**
(walking off job w/o complying with order to report to supervisor proper grounds for discharge)

5073-1128 Eviction from work by fellow employees

5073-1128-5000 Acquiescence by employer

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of U committeemen because other Ees would not work with them, violative)

5073-1142 Impression of discharge conveyed to employee and acquiesced in by employer equivalent to discharge

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(nonsupervisory assistant foreman held to have been unlawfully discharged, where, after he indicated he wanted to step down as assistant foreman, E paid Ee on next day for his accrued vacation pay, as well as his regular pay, but made no allowance for severance pay and Ee was under impression he had been fired)

Sentry Investigation Corp. **249 NLRB No. 130**
(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge even in absence of words; where such can be reasonably inferred from circumstances)*

5073-1164 Notice of replacement to ULP strikes

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(strikers who failed to return to their jobs by deadline set by E and who were replaced by E held to have been *constructively* discharged)

5073-1170 Pretext

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of U advocate-waiter, who had served as interpreter for U organizing committee assertedly for error in his sign-in time on time sheet, violative, where time sheet was closely monitored by headwaiter and testimony of headwaiter and manager to effect they had no knowledge of U waiter's U activity, was discredited)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(discharge of U adherent for pretextual reason of Ee using restrooms prior to his break, violative, where Ee had never been disciplined previously for using restrooms during working time, and record showed that fellow Ee had

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been given at least six warnings for same conduct w/o having been discharged)

Keister Coal Company, Inc. **247 NLRB No. 049**
(discharge of U adherents allegedly because E was overstaffed and Ees were unqualified for their jobs held violative where record showed one of discriminatees held miner's card from State and E hired replacements for discriminatees who would have to be trained and schooled at E's expense)

Galax Apparel Corporation **247 NLRB No. 026**
(discharge of Ee, unlawful, where E suspected Ee of being U adherent because of her association with other known U adherents, and E's excuse for discharge of low production was pretextual)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

5073-1184 Transfer to subcontractor

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

5073-2200 For engaging in protected activity

Syracuse Dy-Dee Diaper Service **251 NLRB No. 135**
(discharge of U adherents, violative, where E's knowledge of Ees passing out U cards and holding U meetings was inferred from small size of plant, reasons asserted for discharges were pretextual, and timing of discharges occurred w/i two weeks of organizational campaign)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(discharge of U adherents, unlawful, where, even though their conduct was not exemplary, no one had previously been fired during entire year preceding U campaign, E's 8(a)(1) conduct had purpose of depleting U's ranks in order to rid itself of U, E seized upon supervisor's complaints about laid off Ees' work to discharge them because of their U activities, and firing of last U adherent completed E's prophesy that U's campaign would be finished)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(violation where Ee was discharged for turning to U for help to obtain higher pay he thought he was entitled to be paid)

Alfred M. Lewis, Inc. **250 NLRB No. 183**
(Bd held that Ee's discharge, allegedly for his *bad attitude* and low production, was instead *solely* a result of E's unlawful production quota and disciplinary systems, since Ee's attitude toward E's unlawful production quotas caused his low production, and his attitude had developed, as reaction to E's counseling implemented as part of unlawful disciplinary system; Ee had refused counseling, as was his right, and his failure to accept it was not legitimate basis for discharge)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(discharge of Ee for stating at U meeting that county was very organized and that people would honor picket line outside E's store, unlawful)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**
(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(discharge of U adherent for refusing to allow her purse to be searched by supervisor, rather than by security guard, upon leaving Es warehouse, not violative, absent discriminatory motivation; fact E's vice-president offered to reemploy adherent and then withdrew offer not evidence of discriminatory motivation where withdrawal because vice-president felt personally insulted)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters)8250 NLRB No. 1339(violation where group leader was discharged one hour after presenting his supervisor with U literature, and reasons for discharge given by E were shifting and pretextual)

Brooks Cameras, Inc. **250 NLRB No. 116**
(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

Clayton Construction Corporation **250 NLRB No. 121**
(violation by discharge of U steward for protesting work assignment as contrary to contract)

E. A. Nord Company **250 NLRB No. 068**
(discharge of Ee because of his expressed intent to file contractual grievance unlawful, conduct was concerted since it could establish precedent for other Ees)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(discharge of U adherent, unlawful, where for his defense of U in argument in view of E's hostility towards U and U activities)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(discharge of U supporter and member of U organizing committee assertedly for his misconduct, violative where misconduct was provoked by E and was not so serious as to warrant denial of reinstatement)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(discharge of Ee, assertedly because of seasonal decline in business and lack of work, unlawful, where E manifested animus towards unionization of Ees, E admitted to Ee that he was being discharged because he signed U card, and E had learned of Ee's U activity through widespread coercive interrogation of Ees)

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(U's conduct in causing discharge of Ees, and E's discharge of Ees at U's request, unlawful, where U steward in requesting discharges was motivated by harassment flowing from Ees' continual accusation of steward's failure to adequately perform his steward's duties, their insistence on prompt grievance meetings, and attempt to unseat him as steward; moreover, even if no intraunion retaliation motivated steward in demanding discharges, but only that personal harassment was no longer bearable, U's demands for discharges would nevertherless be unlawful)

Clinton Inn **249 NLRB No. 022**
(discharge motivated by Ee's U activities rather than his alleged unsatisfactory performance, in view of inconsistencies in E's *business reasons* for discharge and fact that discharge occurred 3 days after supervisor admittedly saw Ee sign U authorization card and that E exhibited strong animus toward U and its adherents)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation where Ees who were outspoken in their demand for higher pay and better conditions of employment, were replaced while on authorized sick leave and were subsequently denied reemployment; E was motivated not by business necessity but rather by Ees' protected activities)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(discharge of 4 out of 10 Ees in unit, violative, in view of timing of discharge soon after supervisor became aware of R ptn; the abruptness of discharge in middle of workshift, and accompanying ULPs)

K

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(discharging Ee assertedly for his tardiness, absenteeism, and unreasonable demand for individual contract, violative, when E had rejected Ee's demands for improvements of wages, pensions and health benefits, had forbidden him to involve other Ees or to seek U assistance in regard to his demands, and discharged Ee only when he insisted that he would pursue the course of concerted action he had outlined contrary to E's order)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**
(discharge of U steward for questioning E's change in practice by denying unit member sandwich at end of 8-hour shift held discrimination against steward (as well as other Ees) to chill protected U organizational activity)

B. N. Beard Company **248 NLRB No. 016**
(constructive discharge of Ee to whom E offered wage rate lower than that provided for in U contract, unlawful, where Ee quit rather than relinquish statutory right to be paid in accordance with contract; fact that Ee intended to leave E's employment in future is no defense where decision to quit was hastened by his being compelled to accept lower wage rate contrary to his statutory right)

5073-2200—Cont.

Leeson Electric Corporation **247 NLRB No. 203**
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

Pay 'N Save Corporation **247 NLRB No. 184**
(suspension and discharge of Ees for wearing U buttons on their store jackets, unlawful, since right to wear buttons is legitimate form of U activity, and there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

The Saloon, Inc. **247 NLRB No. 156**
(discharge of Ee, unlawful, in view of its timing close to Ee's emergence as U proponent, E's resolve to rid itself of U, Ee's strong skills in his job, and implausibility of E's witnesses concerning timing of discharge, of decision to give Ee raise, and of hire of his replacement)

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center **247 NLRB No. 136**
(discharge of economic strikers for persisting in striking in support of their bargaining agent, unlawful)

Anco Insulations, Inc. **247 NLRB No. 081**
(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(even assuming E had business reason for reduction of truck routes, selection of drivers to be terminated violative, where each discharged driver was U supporter, E knew drivers were U adherents and discharges were not in accordance with seniority)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(discharge of known U adherents for various asserted reasons, unlawful, where Ees were experienced and had good work records, discharges occurred shortly after Ees engaged in open U activity, Ees were treated in disparate manner inasmuch as other Ees were not disciplined for same conduct, and asserted reasons for discharges were pretexts with real reason being Ees' U activities)

Blaw-Knox Foundry

Texas Instruments Incorporated **247 NLRB No. 037**
(discharges based on E's invalidly applied dissemination of classified material rule, violative, since Ees were penalized for asserting their statutory rights by publishing confidential area wage survey; application of rule interfered with those rights and tended to inhibit Ees' protected activity)

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

U. S. Oil

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(discharges for U-instigated concerted refusal to work overtime, unlawful)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(discharge unlawful where E was more concerned with Ee's involvement and leadership potential in U organizing effort than with trivial incidents asserted by E as cause for discharge)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(discharge of Ee organizer for U assertedly because business was slow, violative, where shortly after the discharge E fired another Ee, not involved in U activity, to cover up termination of U organizer, and subsequently hired additional four Ees w/o recalling any of the discharged Ees)

Northern Telecom, Inc. v. N.L.R.B. **618 F.2d 421 (C.A. 6, 1980)**
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(discharging shipping clerk because of his U association and because he had filed ULP charge against E for E's interrogating him about his conversation with U representatives, violative since, contrary to E's contention, substantial evidence supports Bd's finding that shipping clerk was nonsupervisory Ee)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(discharging shipping clerk because of his U association and because he had filed ULP charge against E for E's interrogating him about his conversation with U representatives, violative since, contrary to E's contention, substantial evidence supports Bd's finding that shipping clerk was nonsupervisory Ee)

Huron Copysette, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**
(violation in view of evidence that termination of Ee was prompted by anti-U reasons, rather than valid considerations as E contended)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(violation where moving cause for discharge of instructor was continuation of their U activities following faculty strike rather than under-enrolled classes, as alleged)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(violation where moving cause for discharge of instructor was his remarks to student group regarding ongoing labor dispute rather than for disparagement of E, as alleged)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(discharge for U sympathies, unlawful)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(discharge of U members to prevent economic loss by turning project into nonU job and avoid paying U wage scale and benefits, unlawful)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(discharge of U members to prevent economic loss by turning project into nonU job and avoid paying U wage scale and benefits, unlawful)

5073-2400 For refusing, to join or support favored union

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

5073-2400—Cont.

Siro Security Service, Inc. **247 NLRB No. 157**

5073-3300 For striking or during strike

B. N. Beard Company **248 NLRB No. 016**
(discharge of ULP strikers as of time they went out on strike, unlawful, where E did not offer any of striking Ees reinstatement; in fact, E told Ees that they would be discharged and not reinstated if they struck and later told newsman strikers were discharged and, in combination with these actions, E changed locks on plant's doors, requested return of Ees' keys, and withdrew recognition from Us representing Ees)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

5073-3325 Non-ULP strike

C

5073-3325-5000 Strikers may not be discharged prior to replacement

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

5073-3350 Pursuant to no-strike agreement

C. H. Heist Corporation **250 NLRB No. 185**
(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

5073-3367 Economic strike

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(discharge of economic strikers prior to replacement, unlawful)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(discharge of economic strikers for not abandoning strike, unlawful)

Excavation-Coustruction, Inc. **248 NLRB No. 081**
(discharge of Ees who participated in 1-day work stoppage in support of U's bargaining position violated Act as this is strike and not *intermittent work stoppage* which would be unprotected)

Quadee Rubber Company, Division of Minnesota Rubber Company **JD-407-80**
(discharge of economic strikers, unlawful; no evidence of alleged strike misconduct)

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired later, would be as new Ee held violative, since action interfered with Ees' rights)

5073-3375 ULP strike

O.K. Machine

Carterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) 8250 NLRB 089
(discharge of Ees for participation in lawful strike violative)

Bide-A-Wee Home Association **248 NLRB No. 110**
(discharge of Ees engaged in protected strike which E termed U-called illegal strike, unlawful)

Andersen Sand

Arland R. Wells, Jr., d/b/a Strimel Plumbing Company **JD-836-79**
(discharge of Ees for concerted refusal to work until E responded to Ees' demand for recognition of their chosen bargaining representative, unlawful)

5073-3387 Sympathy strike

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(discharge of 4 Ees and disciplinary suspensions of 20 others, for excessive unexcused absences, unlawful, where in each instance unexcused absences charged included days when Ees refused to, cross picket line of U representing other Ees at plant)

5073-4300 For not signing union dues checkoff authorization

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

Visu-Craft By H.B.S., Inc. **JD-887-79**
(discharge of Ee employed at effective date of contract pursuant to security clause which did not provide grace period before persons already employed by E at effective date could be compelled to join U, unlawful)

5073-5200 Per se violation in application of discriminatorily promulgated plant rule

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

5073-5300 For refusing to work assigned hours

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's discharging Ees for refusing to work overtime, not unlawful, notwithstanding fact that U objected to absence rule, where E's institution of absence rule was found to be lawful)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

5073-5400 For refusal to accept unlawful conditions

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(termination of Ees who refused to accept E's unlawfully unilaterally imposed conditions of employment, violative)

5073-6000 Familial relationship to union activist, office holder, steward, etc.

Ahstabula Forge, A Division of ABS Industries, Inc. **JD-388-80**
(E's discharge of Ee and subsequent refusal to reinstate him because his father was U president, unlawful)

The Royal General Company **JD-17-80**
(discharge of Ee because he was brother of U adherent, unlawful)

5073-6600 Mass discharge

Comgeneral Corporation **251 NLRB No. 069**
(mass discharge unlawful in view of timing immediately after upsurge of U activity, animus, and flimsy excuse, together with clear admissions of wrongdoing by supervisors who administered the ULPs)

5073-6800 To prevent employees from voting in election

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

5073-7100 Pursuant to unlawful no-solicitation rule

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(reprimanding Ee who had solicited another Ee who was on work time, unlawful, since was addressed only to prime U adherent and was intended more to impede her U activities than to maintain production and order in restaurant; further, reprimand was to enforce unlawful rule)

5073-7200 To avoid dealing with union

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

Atlan Inc. **JD-890-79**
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5073-7700 Pursuant to illegal union-security agreement

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

5073-7700—Cont.

(violation, where Ees who were reluntant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

Visu-Craft By H.B.S., Inc. **JD-887-79**
(discharge of Ee employed at effective date of contract pursuant to security clause which did not provide grace period before persons already employed by E at effective date could be compelled to join U, unlawful)

5073-8000 Pursuant to union demand because of employees opposition to union officer

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

5073-8300 Pursuant to union demand because of employees lack of union membership

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

5073-8700 To discourage support for disfavored union

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Suburban Ford, Inc. **248 NLRB No. 051**
(discharge of U adherent salesman for *disloyalty* because he tried to explain why he loaned demonstrator to customer, held violative where Ee was experienced salesman with unexceptionable performance record and E was attempting to harass Ee and cool ardor of all Ees for U representation)

5073-9700 Resulting from reassignment of work due to jurisdictional dispute

Sullivan Transfer Co. **247 NLRB No. 117**
(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

5079 REFUSAL TO REINSTATE

5079-0100 Generally

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(where Ee had been discriminated against on 2 occassions valid offer of reinstatement must include reassurance that no further discrimination would occur)

Tri-State Warehouse

5079-1400 Following lay-off

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(reinstatement of discriminatorily laid-off Ee to night shift when he had formerly worked on day shift, unlawful)

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

5079-2800 Non-ULP strikers

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(E's failure to offer position to former economic striker, unlawful, where E filled position with nonstriker after unconditional offer to return to work made on behalf of strikers)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(refusal to reinstate 2 economic strikers immediately, unlawful, where unconditional offer to return to work was made on their behalf and E failed to meet its burden of justification for its failure to offer one Ee employment or for delay in reinstating other Ee)

C-F Air Freight, Inc. **247 NLRB No. 060**
(failure to recall strikers to work assertedly because of financial losses at E's facility, unlawful, where E unlawfully threatened to close plant, contention that decision to do so was made before U activity began was patent contrivance, E made statement to Ees that if they unionized E *would padlock door* and expressed antagonism toward U, and disparate nonclosure of another facility was based on lack of U activity threat)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(E's defense to its failure to offer reinstatement to economic strikers on ground that it was having trouble returning to full operations in wake of strike and caused delay in its ability to offer reinstatement, rejected, since merits of E's justification had previously been decided by Bd and ct against E)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(E's contention that it should be obligated to offer reinstatement only to those economic strikers who responded to its letter regarding reinstatement, rejected, where U's offer to return to work was bona fide and unconditional, E had no substantial business justification for failing to reinstate strikers, E's letter merely inquired into strikers' interest in future job openings and, consequently, strikers were under no obligation to respond to E's letter)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(economic striker does not waive his right to be offered reinstatement due to his failure to respond to E's letter which did not offer reinstatement but merely inquired into strikers' interest in future job openings)

5079-2813 Where replaced

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(discharge of economic strikers prior to replacement, unlawful)

Owen Joint Corporation **248 NLRB No. 076**
(violation where E refused to reinstate economic strikers, as their jobs for which they were qualified became available, following their unconditional offer to return to work)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(E was obligated to offer reinstatement to economic strikers where E failed to carry burden of showing that legitimate and substantial business reasons, including their replacement, justified its refusal to do so)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(existence of bona fide replacements for economic strikers did not justify E's failure to offer strikers positions available, since economic striker is entitled to reinstatement if and when a job for which he is qualified becomes available; fact that his old job is occupied is no excuse for refusing to make reinstatement offer)

5079-2819 To former or substantially equivalent position

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(discriminatee who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(where subject of returning to work is put as question to Ee and not as offer, burden is not on discriminatee to inquire whether or not offer was to reinstate him to his former position inasmuch as offer does not constitute unconditional offer of reinstatement)

Routh Packing Company, Inc. **247 NLRB No. 053**
(lesser jobs filled by temporary and seasonal workers held not substantially equivalent to strikers' former jobs so that failure to offer them to strikers not violative)

Graphic Components, Inc. **JD-377-80**
(refusal to reinstate economic striker, not unlawful, where striker would have been able to fill only temporary job that was not substantially equivalent to job striker previously held)

5079-2825 Except as new employees

Freezer Queen Foods, Inc. **249 NLRB No. 045**
(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it was not possible to achieve its purpose by tolling probationary period during strike, rejected)

Service Garage, Inc. **247 NLRB No. 115**

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired

5079-2825—Cont.

later, would be as new Ee held violative, since action interfered with Ees' rights)

5079-2828 Job absentees during strike

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(E's reinstatement of nonstriking Ees who were absent from work during part or all of economic strike period, and failure to offer such jobs to strikers awaiting reinstatement, held, lawful, where E offered reinstatement only to absentee individuals who supplied satisfactory proof that their absence was due to factors which would have been acceptable to E prior to strike and, hence, there was no evidence that E extended unlawful preference to individuals in the group as compared to strikers)

5079-2831 Unconditional offer to return to work

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(discriminatee who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

Owen Joint Corporation **248 NLRB No. 076**
(violation where E refused to reinstate economic strikers, as their jobs for which they were qualified became available, following their unconditional offer to return to work)

Routh Packing Company, Inc. **247 NLRB No. 053**
(refusal to reinstate economic strikers unconditionally offering to return to work, unlawful)

5079-2837 Under terms of strike settlement agreement

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(in view of ct remand, Bd applied law as it stood before Bd Fleetwood and Laidlaw decisions issued, and affirmed its original decision that E's overall administration of strike settlement agreements with Us was lawful where agreements granted economic strikers greater reinstatement rights than those ordinarily accorded strikers under then-existing and applicable labor laws, and terms of agreement did not *discriminatorily* affect one group or classification of former strikers as opposed to other strikers or to nonstriking Ees)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(contrary to E's contention that any breaches by it of strike settlement agreements with Us were nothing more than violations of U's private contract rights, Bd held such breaches were w/i cognizance of Act and must be remedied in the public interest; accordingly, since E's violations of agreements denied reinstatement of economic strikers who had done no more than engage in protected concerted activity, E's conduct was unlawfully discriminatory)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(E held to have unlawfully breached terms of strike settlement agreements by promoting junior active Ees when senior former strikers were awaiting reinstatement to those jobs, and by personnel adjustments involving certain types of job transfers)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(E's reinstatement of nonstriking Ees who were absent from work during part or all of economic strike period, and failure to offer such jobs to strikers awaiting reinstatement, held, lawful, where E offered reinstatement only to absentee individuals who supplied satisfactory proof that their absence was due to factors which would have been acceptable to E prior to strike and, hence, there was no evidence that E extended unlawful preference to individuals in the group as compared to strikers)

5079-2850 Failure to honor promise to reinstate replaced strikers as vacancies occur

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(refusal to reinstate any of five economic strikers on preferential hiring list to available position, not violative since none of the strikers were qualified to assume the position)

5079-2875 Not unlawful absent discriminatory motivation

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center **247 NLRB No. 136**
(E's contentions in defense of its failure to reinstate discharged strikers that it was economically justified and operated normally w/o them found contradicted by significant increase in costs for overtime paid remaining Ees and hiring of nonunit Ees whose primary function was same as that of strikers)

5079-2881 Disqualified by strike misconduct

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(mere verbal abuse, unaccompanied by any physical actions or gestures that add meaning to words, does not arise to level justifying disqualification from reinstatement)

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(although Ee may actually have engaged in misconduct he or she may not be denied reinstatement absent showing that misconduct was so violent or of such serious nature as to render Ee unfit for future service)

5079-2900 **Preconditions to reinstatement**

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(discriminatee who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

5079-4200 **ULP strikers**

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E could avoid such a situation by discharging strikers and replacing them with individuals willing to work at lesser rates, such conduct would constitute a unilateral action frustrating negotiations and an evasion of duty to bargain on questions which are subject to compulsary bargaining)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E's economic situation may have justified its proposing reduction in wages, it was not established that economic necessity justified its refusal to reinstate strikers except on its own terms; E's position that to reinstate strikers at higher rates was unrealistic was w/o merit, since mutually acceptable agreement may have been reached if E had met its statutory obligation)

Burns Motor Freight, Inc. **250 NLRB No. 045**
(failure to reinstate ULP striker, unlawful, where job available for which he was qualified and other strikers with less seniority recalled)

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(violation where E refused to reinstate Ees discharged unlawfully for protected concerted activity who subsequently engaged in ULP strike because of discharges)

5079-4217 Where replaced

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(permanently replacing and refusing to reinstate ULP strikers, unlawful)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(failure to reinstate striker assertedly because no work was available held violative where E's *alter ego* (reactivated to avoid U) had available work; *alter ego* had crew of nine Ees doing unit work after strike had ceased)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(where U struck principally over E's unlawful unilateral discriminatory changes, replaced striking Ees held entitled to reinstatement even if alleged ULP was only one of many causes of the strike)

5079-4250 Unconditional offer to return to work

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

Bide-A-Wee Home Association **248 NLRB No. 110**

5079-4250—Cont.

(violation by refusal to reinstate strikers who were discharged while engaged in protected strike and subsequently replaced, upon their appearance at E's facility and announcement that they were ready to work)

Matlock Truck Body

Matlock Truck Body

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(refusal to reinstate replaced ULP strikers after they made unconditional offer to return to work, unlawful)

Lucy's, Inc. **JD-832-79**
(E's refusal to reinstate ULP strikers unlawful, where strikers had made unconditional offer to return to work)

5079-4283 Disqualified by strike misconduct

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to reinstate not unlawful where E did not condone picket line misconduct and misconduct of such nature as to remove perpetrators from protection of Act)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(where Ee's picket line misconduct insufficient to justify discharge, E's refusal to reinstate ULP strikers, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to offer reinstatement to ULP strikers, notwithstanding there was some violence on picket line, violative, where no showing that they engaged in unprotected activity warranting their termination)

Matlock Truck Body

Matlock Truck Body

Matlock Truck Body

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

Voss Steel Corporation **JD-216-80**
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

5079-4291 Availability for work

Birmingham Ornamental Iron Company **251 NLRB No. 115**
(termination of ULP striker pursuant to three-day absence rule, not unlawful, where striker travelled for several days making no effort to contact E or U to ascertain if his employment in which he claimed to retain continued interest was still subject to strike; although E has initial duty to notify ULP striker of date upon which he should return to work, under these circumstances some responsibility remains with Ee)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(requiring ULP strikers to fill out availability for work forms as precondition to reinstatement violative)

5079-4500 Following discharge

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**
(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**
(discharge and failure to reinstate Ee because of his activities as U steward violative)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(discriminatee who was driver not reinstated since E's insurance carrier subsequent to discharge excluded from liability coverage any vehicle driven by discriminatee)

Routh Packing Company, Inc. **247 NLRB No. 053**
(no duty to reinstate picketer who was former Ee and considered himself on furlough but was not Ee when strike began)

5079-8600 Following quit

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

N.L.R.B. v The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(violation where E threatened with discharge, and delayed reinstatements of, several Ees who were engaged in ULP strike)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(violation where E threatened with discharge, and delayed reinstatements of, several Ees who were engaged in ULP strike)

5084 FAILURE TO OR DELAY IN RECALL

5084-3300 Laid-off employee

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(recall on basis of U adherence after layoff which was motivated by E's antagonism to U campaign, unlawful)

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

5084-6700 Economic strikes

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(refusal to reinstate 2 economic strikers immediately, unlawful, where unconditional offer to return to work was made on their behalf and E failed to meet its burden of justification for its failure to offer one Ee employment or for delay in reinstating other Ee)

Voss Steel Corporation **JD-216-80**
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(refusal to reinstate any of five economic strikers on preferential hiring list to available position, not violative since none of the strikers were qualified to assume the position)

5084-7500 ULP strikers

Burns Motor Freight, Inc. **250 NLRB No. 045**
(E's failure to reinstate ULP striker, not unlawful, where neither striker's former position nor substantially equivalent position available, and no contention E discriminatorily abolished striker's job)

5090 UNION SECURITY REQUIREMENTS

5090-0100 Generally

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(no authority exists for proposition that E, in compliance with U security provision, has statutory duty, absent valid request, to notify U when new unit Ees are either hired or when they complete their initial 30 days of employment)

5090-5000 Prerequisites for validity of union-security requirements

5090-5028 Appropriate unit considerations

Andersen Sand

5090-5033 Majority status of contracting union at time of execution

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**
(where E recognized minority U and executed contract containing U security clause it violated Act as existence of such provision discriminatorily encourages Ees to join minority U)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(execution of contract containing U-security clause when U did not represent uncoerced majority of Ees, violative, notwithstanding subsequent deletion of such clause)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E and assisted U's inclusion of U security provision in their agreement, not unlawful, notwithstanding agreement itself was unlawful because U lacked majority status at time of execution, where there was no proof that the provision was ever enforced or any Ee discriminated against by its application)

Venture Stores, Inc. **JD-81-80**
(execution of contract containing U-security clause with assisted minority U and deduction of dues pursuant thereto, unlawful)

5090-6700 Execution or maintenance of invalid union-security agreement

5090-6720 Contract with assisted union

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

Baine Service Systems, Inc **248 NLRB No. 087**

(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

Venture Stores, Inc. **JD-81-80**
(execution of contract containing U-security clause with assisted minority U and deduction of dues pursuant thereto, unlawful)

5090-6750 Failure to provide 30-day grace period

Visu-Craft By H.B.S., Inc. **JD-887-79**
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

5090-8300 Illegal enforcement of valid union- security agreement

5090-8307 Extension of contract to nonconsenting employees

O.K. Machine

5090-8350 Unauthorized deduction of union dues

American Nurses' Association **250 NLRB No. 175**
(parties did not intend to allow for escape period during interim between agreements, where all dues checkoff authorizations were executed subsequent to effective date of contract)

Siro Security Service, Inc. **247 NLRB No. 157**

5096 HIRING, CLEARANCE AND REFERRAL AGREEMENTS AND PRACTICES

5096-0100 Generally

5096-0114 Not illegal absent actual discrimination

Bechtel Power Corporation **248 NLRB No. 166**
(absent any recall rights and statistical analysis of actual recall of laid-off Ees showing discrimination towards swing shift Ees, either individually or as group, GC failed to sustain burden proving such discrimination by U hiring hall practices, and thus by E)

5096-2500 Types of agreements and practices

5096-2584 Delegation to union of employment control

5096-2584-8000 Employer's responsibility for union's actions

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

6700 INDICIA OF INTENT TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP

6708 ANTIUNION ATTITUDE OF EMPLOYER

6708-0100 Generally

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(proper test in determining whether discharge of Ee is ULP is whether anti-U animus was moving cause, and not whether discharge is only partially motivated by anti-U animus; to give rise to ULP *but-for* cause of discharge is required)

6708-3700 Antiunion conduct found in prior Board decisions

Marriott Corporation **251 NLRB No. 180**
(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

6708-5000 Antiunion conduct and remarks subsequent to discrimination

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ees assertedly because of their absences immediately prior to and after vacation period, unlawful, where real motive for discharge was revealed through E's comments to one of the Ees that *all this* would not have happened if Ees had not tried to get U in plant)

6708-6200 Antiunion conduct and remarks prior to discrimination

Brooks Cameras, Inc. **250 NLRB No. 116**
(E showed antiU animus by interrogating Ee as to U leadership and organization among Ees for whom U had demanded recognition, accelerating RIF among them and choosing U activists for RIF, and discharging Ee who threatened to organize another group of Ees)

Earl Kuhns d/b/a Frenchy's K

6710 CONTRASTING TREATMENT

6710-2500 Of discriminatee and other employees

Southern California Gas Company **251 NLRB NO. 127**
(discharge of Ee who refused to see E's doctor violative where no other Ee was ever terminated for such refusal and discharge occurred less than 2 weeks after Ee was threatened with termination for complaining to U about working conditions)

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

Campo Slacks, Inc. and J

Central Freight Lines, Inc. **250 NLRB No. 063**
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

Neptune Waterbeds, Inc. **249 NLRB No. 164**
(no violation where active U adherent was discharged for solicitation on E's time, violence toward other Ees, and lateness; although other Ees' work records showed deficiencies, no other Ee was shown to have work-related problems in as many areas as dischargee)

Hedison Manufacturing Company **249 NLRB No. 096**
(allegedly discriminatory conditions imposed on transfer of Ees from their department, which was U stronghold, to other departments in lieu of laying them off, were not imposed on similar transfers of Ees from another department)

Lyman Steel Company **249 NLRB No. 040**
(discharge of U advocate assertedly because his machine had suffered oil leak held violative where other Ees were not punished for same offense and disparate treatment followed E's threat of reprisal for Ee's U activity)

Lyman Steel Company **249 NLRB No. 040**
(depriving U advocate of overtime assertedly because his machine had suffered oil leak held violative where other machine operators had suffered oil leaks earlier w/o repercussions from E)

Earl Kuhns d/b/a Frenchy's K

General Meats, Inc. **247 NLRB No. 153**
(having special sign-in-out sheet whenever Ee left for nonwork purposes)

Wolverine Worldwide, Inc. **247 NLRB No. 137**
(disparate administration of disciplinary system where merely arbitrary and not caused by Ees U activities or sympathies, not violative and Ee discharges due to disparate actions also not violative)

Florida Cities Water Company **247 NLRB No. 111**
(where there were 2 probationary Ees who were both U adherents and only 1 was discharged, this does not preclude, under the circumstances, Bd's finding that discharge of one such Ee was violative)

Clark

Tartan Marine Company **247 NLRB No. 073**
(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

Anco Insulations, Inc. **247 NLRB No. 081**
(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

6710-2500—Cont.

American Metal Processing Company **JD-159-80**
(discharge of known U organizer allegedly for sleeping on job, unlawful since, under ordinary circumstances, this was not dischargeable offense and a few days later another Ee was caught sleeping while still on the clock, and nothing happened to him)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(asserted incidents of misconduct on part of Ees held no defense justifying their discharge where other Ees were routinely *guilty* of similar infractions w/o being disciplined or discharged therefor)

United States Postal Service **JD-(SF)-273-79**
(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

6710-5000 Of union and nonunion employees

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. 098**
(where E's relocation of plant was based on legitimate economic reasons and E was under no legal duty to transfer unit Ees to new location, E's failure to transfer unit Ees while transfering non-unit Ees, not violative, notwithstanding that E did not offer legitimate business reasons for its disparate treatment of unit and not-unit Ees; GC did not claim that disparate treatment was illegally motivated, and it is presumed that an action was taken for lawful reasons, absent evidence of illegality)

Retailer's Coupon Redemption Co., Inc. **JD-194-80**
(violation where E discontinued flexible work hours of U leaders, and sympathizers, while permitting other Ees to continue working flexible hours)

B. G. Costich

6710-7500 Of striking and nonstriking employees

General Time Corporation, Westclox Military Products Division **249 NLRB No. 178**
(E's failure to pay accrued vacation pay to striking Ees violative where no business justification existed)

6713 DELAY IN DISCHARGING OR LAYING OFF

6713-3300 After knowledge of facts relied on to justify discharge

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

6713-6700 After knowledge of offense relied on to justify discharge

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(where E had cause to fire Ee but did not do so until day after Ee attended U meeting, E violated Act as purpose was to discourage U membership)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

6715 DEPARTURE FROM ESTABLISHED PROCEDURES AND STANDARDS

6715-0600 Periodic wage review

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

6715-2000 Discharge procedure

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

6715-2500 Layoff procedure

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(selection of Ees for economic layoff, unlawful where Ees were selected out of seniority, supervisor and general foreman told Ees that U supporters would not be called back to work and that reason for layoff was to get rid of people who were trying to organize U, E hired new Ees before offering Ees on layoff opportunity to be employed, Ees recalled were as new Ees w/o their prior benefits and for probationary period, and E hired new Ees while Ees were still on layoff)

6715-3000 Disciplinary policy

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

Central Freight Lines, Inc. **250 NLRB No. 063**
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

CTS Keene, Inc. **247 NLRB No. 141**
(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

Northern Telecom, Inc. v. N.L.R.B. **618 F.2d 421 (C.A. 6, 1980)**
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

6715-4000 Enforcement of plant rules

CTS Keene, Inc. **247 NLRB No. 141**
(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

6715-4025 Imposition of more stringent rules

Hall of Mississippi, Inc. **249 NLRB No. 119**
(announcing strict adherence to company rules concerning break periods, violative, where such announcement represented change in existing practice and more stringent enforcement of company rules because of Ees' U activities)

6715-5000 Layoff during slack period

Hedison Manufacturing Company **249 NLRB No. 096**
(defense to unlawful imposition of restrictive conditions on transfer of Ees to other departments in lieu of layoffs on ground that E had no obligation to offer Ees transfers and could have laid them off w/o offering them alternative employment, rejected, where E had, as past practice, always offered Ees transfer, as alternative to layoff, free of conditions imposed on Ees herein)

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

6715-5500 Allotment of work

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(reduction of hours of leading U advocate, part time Ee with good employment record, in order to give less senior Ee *a few hours* held violative where E's action against seniority was contrary to its usual practice and was taken against Ee to *straighten him up*)

6715-6000 Leave practice

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**

(requiring U adherent to secure doctor's certificate in order to return to work after one day's absence, violative, where certificates were never required in past and obviously E instigated such policy because of Ee's U activities)

6715-7000 Recall after layoff

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

(recall on basis of U adherence after layoff which was motivated by E's antagonism to U campaign, unlawful)

6718 DIFFICULTY IN SECURING EQUALLY EXPERIENCED REPLACEMENTS

Sentry Investigation Corp. **249 NLRB No. 130**

(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

6725 DISPROPORTIONATE NUMBER OF UNION'S MEMBERS IN GROUP DISCRIMINATED AGAINST

6725-7500 Unit (departmental or plantwide) in which disproportion is significant

Hedison Manufacturing Company **249 NLRB No. 096**

(layoff of 21 Ees 19 of whom had signed U cards indicated high probability that layoff was discriminatorily motivated)

6728 EXONERATION OF EMPLOYEE FROM CHARGES ALLEGED AS REASON FOR DISCHARGE

Anchor Contracting Corp. **JD-231-80**

(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

6730 FAILURE TO DISCIPLINE SAME EMPLOYEE FOR EARLIER CONDUCT OF SAME CHARACTER AS THAT RELIED ON

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

Peavey Company **249 NLRB No. 110**

(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**

The Royal General Company **JD-17-80**

(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engagd in U activities)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**

(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

6733 FAILURE TO GIVE BOARD EXPLANATION FOR DISCHARGE

Austell Box Board Corporation **249 NLRB No. 044**

(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

6735 FAILURE TO TELL EMPLOYEE AT TIME OF DISCHARGE REASON THEREFOR

Sentry Investigation Corp. **249 NLRB No. 130**

(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(E's defense of economic necessity for layoff or discharge of Ees rejected as pretextual, where E failed to submit any documentary evidence of alleged adverse business conditions claimed as reason for its action; and, although E asserted it had decided to lay off Ees several weeks prior to date layoffs were effected, E did not mention such decision or alleged underlying business conditions to Ees until date of their termination)

6738 FAILURE TO WARN EMPLOYEE PRIOR TO DISCIPLINE

Pilgrim Life Insurance Company **249 NLRB No. 140**

(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

6740 FALSE EXPLANATION INDICATES ANTIUNION MOTIVE

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(where asserted motive for discharge is false, trier of fact can infer that there is an unlawful motive which E desires to conceal)

6740-5000 Pretext

Pilgrim Life Insurance Company **249 NLRB No. 140**

(discharge of U adherent held unlawful where personnel record of adherent stated he was discharged for distributing literature on company time and E testified she was discharged for allowing unreasonable backlog in her work to accumulate since where shifting explanations offered for discharge of known U adherent Bd is justified in concluding neither reason is real reason and discharge was discriminatorily motivated)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**

(severe reaction and total intransigency to alleged problem (leaving on long scheduled vacation) which at best was precipitated by E's own management is clear evidence of pretext)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

Custom Wood Interiors, Inc. **248 NLRB No. 023**

(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

General Warehouse Corp. **247 NLRB No. 142**

(discharge of vociferous leader of Ees opposed to waiving E's cost of living increase, assertedly because of his absenteeism, held violative where discharge came on heels of Ees' rejection of E's attempts to avoid cost of living increase, followed by E's changing its check cashing policy and eliminating rotating Ees for work they considered undesirable)

Service Garage, Inc. **247 NLRB No. 115**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(where reasons advanced by E for personnel actions are not persuasive, protected or U activity may well disclose real motive behind E's actions and show that reasons are pretextual)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**

(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**

(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

6740-5050 Raised for first time at Board hearing

Sentry Investigation Corp. **249 NLRB No. 130**

6740-5050—Cont.

(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

6743 GOOD EMPLOYMENT RECORD OF DISCRIMINATEE

Harvey's Wagon Wheel, Inc. v. N.L.R.B. **550 F.2d 1139 (C.A. 9, 1980)**

6743-0900 Absence of complaints

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Suburban Ford, Inc. **248 NLRB No. 051**

6743-4500 Favorable comment

6743-4533 By supervisors

Lane Trenching, Inc. **247 NLRB No. 183**
(discharge of admittedly *good* Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

6745 INVESTIGATION OF EMPLOYEE'S CONDUCT

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

6753 OFFER OF REINSTATEMENT SUBSEQUENT TO FILING OF CHARGES

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(original rejection of unconditional request for reinstatement with *No, we don't have a job for you,* but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work,* violative as offer vague and not tendered in good faith)

6758 CHANGE OF PRIOR ATTITUDE TOWARD EMPLOYEE

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

6760 PRIOR QUESTIONING OR WARNING

6760-1400 Questioning employee concerning union

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

6760-5600 Threats of discharge or layoff, etc.

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff and offered Ee adherent severance pay to induce her to seek other employment)

6765 REINSTATEMENT AFTER DISCHARGE

6765-5000 As new employee

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**

6768 REPLACEMENT OF DISCRIMINATEE

6768-1400 Additions to staff from which discriminatee was laid off for alleged lack of work

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(failure to reinstate striker assertedly because no work was available held violative where E's *alter ego* (reactivated to avoid U) had available work, *alter ego* had crew of nine Ees doing unit work after strike had ceased)

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

6768-2800 After layoff for slack

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

6768-5600 By new man

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

6775 RETENTION OF LESS QUALIFIED EMPLOYEE AT TIME OF LAYOFF

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

6783 DISREGARD OF SENIORITY

Burns Motor Freight, Inc. **250 NLRB No. 045**
(failure to reinstate ULP striker, unlawful, where job available for which he was qualified and other strikers with less seniority recalled)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, from his desired second shift to less desirable day shift held violative where transfer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

6785 LACK OF APPARENT REASON OR ADEQUATE EXPLANATION FOR ACTION

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

6788 SHIFT OF GROUND IN EXPLAINING EMPLOYER'S ACTION

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation by discharge of U *pusher* where E vacillated between two asserted separate reasons for discharge-Ee's absenteeism and his lying about seriousness of his father's illness as reason for his absence; E called management meeting upon U *pusher's* return to work before knowing he had lied about his father's being hospitalized, then relied upon the lie as the reason for discharge notwithstanding lenient policy about excusing absences)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

6788-5000 Conflicting reasons or inconsistent theories

Swift and Company **250 NLRB No. 152**

Brooks Cameras, Inc. **250 NLRB No. 116**
(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of U adherent held unlawful where personnel record of adherent stated he was discharged for distributing literature on company time and E testified she was discharged for allowing unreasonable backlog in her work to accumulate since where shifting explanations offered for discharge of known U adherent Bd is justified in concluding neither reason is real reason and discharge was discriminatorily motivated)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of bartender-U adherent, assertedly for being away from his work, using customers', rather than Ees', restroom and not being properly attired held violative where shifting reasons were adopted by E to conceal discriminatory motive)

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

6790 STATEMENT MADE BY EMPLOYER CONCERNING DISCHARGE

6790-3300 After discharge

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(E's statements to Ees that real reason for layoffs and department shutdown was because E could not afford to pay U wages and that E could not operate under U)

Southwest Detroit Hospital **249 NLRB No. 071**
(fact that supervisor failed to state succintly proximate cause of discharge does not allow for invocation of *pretext* or *shifting reasons* theory against E)

6790-6700 Prior to or at time of discharge

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(discharge of formerly striking Ee assertedly for threatening violence against E's wife and house, unlawful, where Ee's denial of threat was credited, prior to discharge E made statement that he would have gotten rid of Ee but for U, and E exhibited virulent hostility toward ex-strikers generally)

6793 TIMING OF DISCRIMINATORY ACTION

Harvey's Wagon Wheel, Inc. v. N.L.R.B. **550 F.2d 1139 (C.A. 9, 1980)**

6793-1100 After employee questioned employer about benefits

General Meats, Inc. **247 NLRB No. 153**
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

6793-1200 After employer gained knowledge of union activity

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(close timing of Ee's discharge and his engagement in U activities as well as unlawful interrogation of Ee supported finding that E unlawfully discharged Ee)

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(inference of discriminatory motive warranted where E would not reinstate Ee allegedly because E would no longer get along with Ee after Ee threatened ct action against E and, when considering how valuable Ee was to E, E would not so summarily have allowed Ee to leave had it not been for certain knowledge that E had of his very recent U activities)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

Hedison Manufacturing Company **249 NLRB No. 096**
(final decision arrived at to lay off Ees)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible

6793-1200—Cont.

explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purposes was to discourage Ee so she would quit)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(discharge of Ee w/i very short time E knew Ee was U officer held violative where E's reasons for discharging Ee were shifting and somewhat contradictory)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

Kenneth and Mary M. McGlaughlin, Copartners, d/ b/a Hudson-High Super Duper **247 NLRB No. 199**
(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

American Petrofina Company of Texas **247 NLRB No. 015**
(Fact almost year had passed between U activity of alleged discriminatee and his discharge did not preclude finding of violation since *mere passage of time does not gainsay discriminatory intent*)

6793-2500 Coincidence with critical period in union movement

6793-2511 At height of union membership or organizational drive

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

6793-2517 Following demand for recognition

Brooks Cameras, Inc. **250 NLRB No. 116**
(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

6793-2533 Following election of union

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

Earl Kuhns d/b/a Frenchy's K

6793-2588 Imminence of representation election

Suburban Ford, Inc. **248 NLRB No. 051**
(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

6793-5000 Coincidence with other unfair labor practices

6793-5040 Discharge of other employees for union activity

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

6793-5060 Interrogation

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

6793-7500 Following conspicuous union activity of discriminatees

6793-7519 Sponsoring or circulating petition regarding union

North State Supply Co., Inc. **247 NLRB No. 181**
(discharge of Ee immediately after he embarked on U organizational campaign violative)

6793-7531 Participation in prior ULP proceeding

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

6793-7563 Processing of grievances

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

United States Steel Corporation **250 NLRB No. 059**

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

Peavey Company **249 NLRB No. 110**
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

6793-7575 Leadership in union movement

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**

6793-7575—Cont.

(discharge of Ee after he showed that he seriously intended to pursue what had earlier been a less-than-consistent interest in achieving collective representation for Ees which threatened to lead to breakdown of *family* relationship which E tried to maintain among its Ees)

6793-7581 Filing grievance

Burgess Mining

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

6795 UNUSUAL SURROUNDING CIRCUMSTANCES

6795-7000 Severe penalty for trivial offense

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

6795-8000 Suddenness of employer's decision

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(severe reaction and total intransigency to alleged problem (leaving on long scheduled vacation) which at best was precipitated by E's own management is clear evidence of pretext)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspension of U committeeman for allegedly stealing customer receipts, violative, when made w/o prior warning and Ee told that *you have a lawyer* referring to U's counsel)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

Albany Steel and Brass Corporation **JD-227-80**
(discharge of admittedly *very knowledgeable Ee* assertedly because of his absenteeism and for his job deficiencies held violative where E terminated Ee forty minutes after being notified that Ee intended to seek assistance from Bd concerning his pension dispute with E; discharge was precipitous and in middle of pay period)

8300 AFFIRMATIVE DEFENSES TO CHARGES OF DISCRIMINATION

8301 GENERALLY

8301-4000 Act permits discharge for any reason other than union activity

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8301-6000 Mixed motives; other grounds immaterial if encouragement or discouragement was also purpose

Alfred M. Lewis, Inc. **250 NLRB No. 183**
(Bd held that Ee's discharge, allegedly for his *bad attitude* and low production, was instead *solely* a result of E's unlawful production quota and disciplinary systems, since Ee's attitude toward E's unlawful production quotas caused his low production, and his attitude had developed, as reaction to E's counseling implemented as part of unlawful disciplinary system; Ee had refused counseling, as was his right, and his failure to accept it was not legitimate basis for discharge)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(discharge motivated only in part by anti-U discrimination is illegal)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(E can best show improper motives did not move it to discharge Ee by adducing proof that other Ees were discharged for same reason that Ee was discharged, where there is no suggestion that other Ees were discharged for improper motive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

8301-8000 Valid cause for discrimination no defense

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

8307 BUSINESS MANAGEMENT CONSIDERATIONS

8307-0100 Generally

East Wind Enterprises **250 NLRB No. 101**
(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

Safety Line, Inc. **250 NLRB No. 075**
(discharge of U adherent working only part-time not violative where he was given choice of working full time to fulfill E's need for greater production or being discharged, and he did not choose to work full time)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

8307-0150 Economic necessity does not justify ULP

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E could avoid such a situation by discharging strikers and replacing them with individuals willing to work at lesser rates, such conduct would constitute a unilateral action frustrating negotiations and an evasion of duty to bargain on questions which are subject to compulsary bargaining)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E's economic situation may have justified its proposing reduction in wages, it was not established that economic necessity justified its refusal to reinstate strikers except on its own terms; E's position that to reinstate strikers at higher rates was unrealistic was w/o merit, since mutually acceptable agreement may have been reached if E had met its statutory obligation)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

8307-1400 Change to independent contractor system

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

8307-4200 Poor productivity

Streamway Division of The Scott

8307-4250 Not real reason

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E giving Ee written warning and 3 day suspension in reprisal for his leading role in U organizational campaign, unlawful; E's contention that Ee produced less than other department Ees was pretext for warning and suspension)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

Garden State Motors Co. **JD-160-80**

8307-4900 Shortage of essential materials

8307-4950 Not real reason

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

8307-5200 Overstaffing

Albertson's Inc. **JD-(SF)-104-80**
(no violation, where E would have faced problems trying at another store to hire Ee who had filed grievance, because of E's full work force)

8307-7700 Shutdown because of operational difficulties

8307-7750 Not real reason

Smedberg Machine

Hart Ski Mfg. Co., Inc. **JD-11-80**
(layoff of Ees, unlawful, notwithstanding contention layoff due to problems with production process, as layoffs took place w/o regard to seniority after Ees had rejected E's contract proposals to Ee committee and E gained knowledge of Ees' support of outside U, production problems had existed for some weeks prior to layoffs and E hired new Ees during period; further, Ees were recalled day after committee signed contract with E)

8307-8000 Absorption or elimination of work duties

Conagra, Inc. **248 NLRB No. 085**
(elimination of U adherent's job as *bathroom relief*, not unlawful, where necessity for position was eliminated by remodeling, adherent was offered another job by E but rather than bump incumbent took voluntary layoff and went on unemployment compensation, and upon expiration of unemployment benefits returned to work in another position)

8307-8400 Slack work or other economic necessity

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because E lost contract with major customer, unlawful, where E failed to explain circumstances involved and to mention layoffs or any likelihood of loss of contract to Ees prior to layoff, and supervisors admitted to Ees that E would rather close operation than deal with U)

8307-8433 Not real reason

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**
(where only one Ee out of 60 was terminated)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

Hedison Manufacturing Company **249 NLRB No. 096**
(asserted seasonal decline rejected as reason for layoffs where assertion was merely an after-thought and was not basis for layoffs where E failed to prove any business consideration for layoffs as indicated by almost total absence of records to support E's position)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E's defense of economic necessity for layoff or discharge of Ees rejected as pretextual, where E failed to submit any documentary evidence of alleged adverse business conditions claimed as reason for its action; and, although E asserted it had decided to lay off Ees several weeks prior to date layoffs were effected, E did not mention such decision or alleged underlying business conditions to Ees until date of their termination)

Smedberg Machine

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

Suburban Ford, Inc. **248 NLRB No. 051**
(E's *economic defense* of *business decline* rejected where chose not to introduce into evidence documentation of its annual reports, profits and loss figures etc. or any data for comparative purposes regarding personnel and income levels; failure to introduce such evidence justified inference that it would not support or assist contentions of party who originated them)

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center **247 NLRB No. 136**
(E's contentions in defense of its failure to reinstate discharged strikers that it was economically justified and operated normally w/o them found contradicted by significant increase in costs for overtime paid remaining Ees and hiring of nonunit Ees whose primary function was same as that of strikers)

International Business Systems, Inc. **247 NLRB No. 102**
(violation where E reduced Christmas bonus by half because of Ees' U activity and not because available cash was insufficient, as asserted)

C-F Air Freight, Inc. **247 NLRB No. 060**
(failure to recall strikers to work assertedly because of financial losses at E's facility, unlawful, where E unlawfully threatened to close plant, contention that decision to do so was made before U activity began was patent contrivance, E made statement to Ees that if they unionized E *would padlock door* and expressed antagonism toward U, and disparate nonclosure of another facility was based on lack of U activity threat)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(business was slow)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(violation where moving cause for discharge of instructor was continuation of their U activities following faculty strike rather than under-enrolled classes, as alleged)

8307-8450 Adequately established

Simpson Steel Fabricators

B. N. Beard Company **248 NLRB No. 016**
(discharge of truckdriver for quitting work early w/o permission, not unlawful, where Ee did so knowing that E was under pressure for economic reasons to have as much hauling work done as possible on day Ee left early)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(layoffs not unlawful where E had incurred substantial losses and facility had been listed for sale before onset of U activity; and site of new operation was not ready for use at time of closing)

8307-9100 Transfer of department to new plant

Universal Security Instruments, Inc. **250 NLRB No. 092**
(discharge of Ees because of their refusal to accept transfer to E's new plant not violative where no evidence that discharges were based on any discriminatory motives, or refusal of Ees to transfer because of change in conditions

of employment or absence of U at new plant, notwithstanding the transfers of willing Ees were violative because E failed to bargain with U)

8311 BUSINESS DISRUPTION

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**

(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8318 EMPLOYER POLICY AGAINST HIRING FORMER EMPLOYEES

Tartan Marine Company **247 NLRB No. 073**

(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

8322 CONTRACT PROVISION

Cowlitz Studd Company **JD-(SF)-141-80**

(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

8322-2000 Discriminatory enforcement of provisions

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**

(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

8322-8000 No-strike agreement

Andersen Sand

8326 DELAY IN DISCHARGE AFTER KNOWLEDGE OF UNION ACTIVITY CARRIED ON BY EMPLOYEE NO DEFENSE

American Petrofina Company of Texas **247 NLRB No. 015**

(Fact almost year had passed between U activity of alleged discriminatee and his discharge did not preclude finding of violation since *mere passage of time does not gainsay discriminatory intent*)

8329 FAILURE OF EMPLOYEE TO APPLY FOR REINSTATEMENT

8329-0600 Unconditional application

Owen Joint Corporation **248 NLRB No. 076**

(returning strikers' actions and statements, held to be broad enough to constitute unconditional offers, where they came to shop superintendent's office and one of them told superintendent, *I'm ready to go back to work,* while another asked him *for my timecard and my job* and, upon learning that they were replaced, another striker asked superintendent, *when a job came open, would he give me a call*)

8329-7500 No defense where illegally conditioned

Don Pizzolato, Inc. **249 NLRB No. 136**

(where Ee did not return application form to former E, this was not considered rejection of valid offer of reinstatement as application clearly indicated interview was needed and was conditional offer)

8347 FAILURE TO APPLY FOR JOB

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**

(discharge of formerly striking Ee purportedly for taking E's money for personal use, unlawful, where discharge was in retribution for Ee's striking as evidenced by E's animus toward ex-strikers and resolve to discharge them, misleading nature of termination notice implying that money was taken in clandestine manner, and fact that Ee acted with consent of immediate supervisor and had returned money w/i agreed upon time and before being confronted by E about what he had done)

8351 MISCONDUCT OF EMPLOYEE

8351-0100 Generally

General Telephone Company of Michigan **251 NLRB No. 099**

(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

8351-0114 Condonation vitiates defense

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(E did not condone picket line misconduct where it consistently warned strikers about their conduct, obtained temporary injunction against strike, and discussed with U disciplining 12 strikers for their misconduct notwithstanding notice to strikers that all would be reinstated)

The Royal General Company **JD-17-80**

(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engagd in U activities)

8351-0128 Good-faith belief as to misconduct may be defense

North Cambria Fuel Company, Inc. **247 NLRB No. 176**

(termination of striking Ees for serious misconduct, not unlawful, where E reasonably believed that strikers were guilty of improper conduct in view of their gathering outside E's gates in contempt of ct injunction, damage done to suppliers' trucks by rocks thrown by Ees and subsequent guilty pleas in ct to charge of disorderly conduct)

Page Airways of Michigan, Inc. **JD-862-79**

(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

8351-0142 Mistaken belief as to misconduct no defense if conduct did not in fact occur

Catalina Yachts **250 NLRB No. 048**

(violation by discharge of U activist for urging two Ees to vote for U; dischargee was engaging in protected activity, notwithstanding E may have believed he had threatened fellow Ees with being reported to immigration services, as asserted)

Page Airways of Michigan, Inc. **JD-862-79**

(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

8351-1200 Breach of no-strike agreement

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**

(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

C. H. Heist Corporation **250 NLRB No. 185**

(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

Andersen Sand

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**

(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

8351-1500 Breach of company rules

United States Postal Service **JD-(SF)-273-79**

(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**

(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purposes proscribed by rule were tolerated at plant)

8351-1550 Not real reason

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**

(discharging leading U in-house organizer shortly before Bd-conducted election, assertedly because he violated no-solicitation rule, violative, since E did not have valid no-solicitation rule, but *conjured up* a no-solicitation rule for purpose of terminating U organizer)

8351-4900 Refusal to perform assigned duties

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**

(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8351-5800 Strike in violation of 8(g) notice requirements

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**

(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

8351-6200 Strike misconduct

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**

(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

8351-6233 Not real reason

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

8351-6250 Insufficient to justify discharge or other discipline

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080

(mere verbal abuse, unaccompanied by any physical actions or gestures that add meaning to words, does not arise to level justifying disqualification from reinstatement)

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080

(although Ee may actually have engaged in misconduct he or she may not be denied reinstatement absent showing that misconduct was so violent or of such serious nature as to render Ee unfit for future service)

Owen Joint Corporation **248 NLRB No. 076**

(returning striker's action of jumping and lying flat out on automobile hood of non-striking Ee when the latter was attempting to cross picket line, not sufficiently serious to justify denial of reinstatement)

Matlock Truck Body

Matlock Truck Body

Matlock Truck Body

Matlock Truck Body

Matlock Truck Body

Page Airways of Michigan, Inc. **JD-862-79**

(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

8351-6255 Sufficient to justify discharge or other discipline

General Telephone Company of Michigan **251 NLRB No. 099**

(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**

(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

Quadee Rubber Company, Division of Minnesota Rubber Company **JD-407-80**

(Ees' acts of violence and specific threats of bodily harm during economic strike justified their discharges)

Hoerner-Waldorf Corporation, A Division of Champion International Corporation **JD-(SF)-186-80**

(discharge of six Ees, not unlawful, where all six Ees engaged in picket line misconduct)

Voss Steel Corporation **JD-216-80**

(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

8355 NONUNION EMPLOYEE SIMULTANEOUSLY DISCHARGED

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**

(discharge of Ee organizer for U assertedly because business was slow, violative, where shortly after the discharge E fired another Ee, not involved in U activity, to cover up termination of U organizer, and subsequently hired additional four Ees w/o recalling any of the discharged Ees)

8365 REINSTATEMENT OR OFFER OF REINSTATEMENT

8365-2000 No obligation to reinstate if for sufficient, legitimate, and substantial business reasons

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080

(burden on E to establish that it had sufficient, legitimate, and substantial business reasons for refusing to take back economic striker)

Graphic Components, Inc. **JD-377-80**

(no obligation of reinstatement of non-ULP striker if E decides not to fill position)

8365-2500 Offer not made in good faith no defense

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080

(original rejection of unconditional request for reinstatement with *No, we don't have a job for you*, but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work*, violative as offer vague and not tendered in good faith)

8365-3000 Conditions attached to offer

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(requiring ULP strikers to fill out availability for work forms as precondition to reinstatement violative)

8365-3300 Reinstatement to position not substantially same no defense

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**

(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

Graphic Components, Inc. **JD-377-80**

(where only part time or temporary positions available, E does not need to offer these positions to returning non-ULP strikers as positions not considered *substantially equivalent*)

8365-5000 Offer of reemployment as new employee no defense

Freezer Queen Foods, Inc. **249 NLRB No. 045**

(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it was not possible to achieve its purpose by tolling probationary period during strike, rejected)

8365-6300 No valid offer made

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080

(where subject of returning to work is put as question to Ee and not as offer, burden is not on discriminatee to inquire whether or not offer was to reinstate him to his former position inasmuch as offer does not constitute unconditional offer of reinstatement)

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080

(where Ee had been discriminated against on 2 occassions valid offer of reinstatement must include reassurance that no further discrimination would occur)

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080

(original rejection of unconditional request for reinstatement with *No, we don't have a job for you*, but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work*, violative as offer vague and not tendered in good faith)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

(offer of reinstatement communicated to discriminatee's roommate not valid offer)

8365-6300—Cont.

Newspaper Printing Corporation **JD-203-80**
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

8372 REPLACEMENT

8372-7500 ULP strikers may not be permanently replaced

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(permanently replacing and refusing to reinstate ULP strikers, unlawful)

8376 RETENTION OR REEMPLOYMENT OF UNION MEMBERS

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

8380 SENIORITY

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

8384 UNION OR OTHER CONCERTED ACTIVITY, NO DEFENSE

8384-3300 Employer may discipline employee for union activities during work hours

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

Tartan Marine Company **247 NLRB No. 073**
(E posting notice requesting that Ees notify supervisors if any members of U organizing committee or anyone else attempted to *bother* Ees during working time about U, not unlawful; notwithstanding tone of notice, which also advised Ees against signing authorization cards and warned that members of U organizing committee would be held to full compliance with company rules, was hostile to U)

8384-8300 Particular activities

8384-8337 Display or wearing of union insignia

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

8387 UNSATISFACTORY BEHAVIOR OF EMPLOYEE

8387-0300 Absence from work or lateness

Alfa Leisure, Inc. **251 NLRB No. 088**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(discharge of Ee for absenteeism not unlawful, notwithstanding fact that Ee was active U organizer, where her final warning on absenteeism preceded any alleged U activity)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(warning given to Ee over lateness, not violative, where alleged hostility against Ee arose from incident too remote in time (2 months) to have been significant factor)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(discharges in drive to correct absenteeism, not unlawful, where U activity of alleged discriminatees was small, some dischargees were not alleged to be discriminatees, corrective action had been planned prior to U campaign, and E did not fire known U activist when presented the opportunity to do so)

Charles Batchelder Company, Inc. **250 NLRB No. 009**

Streamway Division of The Scott

Landmark Beef Processors, Inc. **248 NLRB No. 041**
(discharge of lead person, who was U advocate, for single unexcused absence held not violative where E had demonstrated no anti-U animus and Ee held position of some responsibility for which she received higher pay than others)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(discharge of Ee for absenteeism not unlawful, notwithstanding GC's contention that absenteeism was E's pretext for discharge and real reason was Ee's U activity)

Coastal Volkswagen, Audi **JD-(SF)-144-80**
(discharge of U activist because of repeated unexcused absences, not violative, notwithstanding that E's earlier warning letter to him for absences violated 8(a)(3); it was not incumbent upon E thereafter to ignore unexcused absences)

8387-0350 Not real reason

Logan Coca Cola Bottling Company **250 NLRB No. 164**

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unilateral reduction in length of grace period for lateness and disciplining Ee because her late arrival was outside protection of more stringent grace period but w/i original grace period guideline, violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ee assertedly for absenteeism, unlawful, where real reason was E's desire to rid itself of Ee primarily responsible for bringing U into plant and to let his discharge, publicly announced, serve as dramatic example to other Ees of what they could expect if they supported U)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ees assertedly because of their absences immediately prior to and after vacation period, unlawful, where real motive for discharge was revealed through E's comments to one of the Ees that *all this* would not have happened if Ees had not tried to get U in plant)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(discharge of formerly striking Ee assertedly for reporting to work 5 minutes late, unlawful, where E exhibited animus toward ex-strikers, pettiness of asserted reason for discharge demonstrated reason was pretextuous, and E betrayed intention to retain Ee only temporarily after her reinstatement)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(discharging Ee assertedly for his tardiness, absenteeism, and unreasonable demand for individual contract, violative, when E had rejected Ee's demands for improvements of wages, pensions and health benefits, had forbidden him to involve other Ees or to seek U assistance in regard to his demands, and discharged Ee only when he insisted that he would pursue the course of concerted action he had outlined contrary to E's order)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

General Warehouse Corp. **247 NLRB No. 142**
(discharge of vociferous leader of Ees opposed to waiving E's cost of living increase, assertedly because of his absenteeism, held violative where discharge came on heels of Ees' rejection of E's attempts to avoid cost of living increase, followed by E's changing its check cashing policy and eliminating rotating Ees for work they considered undesirable)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E tolerated habitual tardiness for a long time but then imposed crackdown on tardiness after onset of U)

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and

8387-0350—Cont.

failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was no interferance with production, and in view of E's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

The Royal General Company JD-17-80
(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engagd in U activities)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection JD-(SF)-310-79
(purported incidents of tardienss on Ee's part no defense to his unlawful discharge where such incidents occurred 1 or more months prior to discharge, and other Ees were routinely *guilty* of similar infractions w/o being disciplined or discharged)

8387-0500 Accidents

K

8387-0550 Not real reason

Central Freight Lines, Inc. 250 NLRB No. 063
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. 247 NLRB No. 090
(suspension of driver, who had been involved in several accidents, held in reprisal for his U activities where other drivers had more serious accidents and were not disciplined, suspension closely followed Ee's request to attend Bd hearing and was in middle of number of discriminatory discharges, and latest accident was seized upon to disguise E's real motive in suspending Ee)

8387-0600 Overstaying vacation or leave

8387-0650 Not real reason

Logan Coca Cola Bottling Company 250 NLRB No. 164
(unauthorized vacation)

8387-1300 Assault on fellow employee

Neptune Waterbeds, Inc. 249 NLRB No. 168

8387-1350 Not real reason

Jacques Syl Knitwear, Inc. 247 NLRB No. 191
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

8387-1500 Coercion and intimidation of other employees

Charles Batchelder Company, Inc. 250 NLRB No. 009

8387-1550 Not real reason

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

8387-1800 Damage to goods and machinery because of carelessness

8387-1850 Not real reason

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 053
(suspension of formerly striking Ee assertedly because of damage to E's rental vehicle due to Ee's improper checking out of equipment before delivery to customer, unlawful, in view of E's animus toward ex-strikers, timing of suspension to Ee's activities as steward, absence of evidence of negligence on Ee's part and of precedent for punishment herein, E's predisposition to be punitive, and E's failure to place in evidence any written statement attributable to customer)

C

8387-2000 Discourtesy to patrons

8387-2050 Not real reason

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner 248 NLRB No. 152
(violation, where Ee who was demanding that E pay its Ees their minimum legal wage and improve other terms and conditions of employment, was discharged assertedly because she antagonized customers by refusing to serve them)

General Rental Co. d/b/a Avis Rent--A--Car 247 NLRB No. 188
(violation where soon after election E discharged U campaign organizer assertedly because E had received letter from customer complaining that U supporter kept the customer waiting while U supporter drank coffee)

8387-2200 Customer complaints about work

8387-2250 Not Real Reason

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 053
(discharge of formerly striking Ee assertedly for servicing customer improperly, unlawful, where customer was brought in as ringer by E to provoke and discredit Ee and create pretext for discharge)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 247 NLRB No. 125
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

8387-2300 Dishonesty

Shuttle Motor Corporation JD-327-80
(discharge of mechanic, not unlawful, where for general poor work record and specifically for submitting false warranty claim in order to avoid dispute with customer and be paid by manufacturer for labor; rather than for inquiring of state agency regarding legality of threatened *back-stubbing*, or as result of E's belief Ee had or was about to invoke NLRB processes)

Neckover Trailer Manufacturing Company JD-256-80
(Ee's attempted fraud of work time)

8387-2500 Disloyalty

8387-2550 Not real reason

Austell Box Board Corporation 249 NLRB No. 044
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Suburban Ford, Inc. 248 NLRB No. 051
(discharge of U adherent salesman for *disloyalty* because he tried to explain why he loaned demonstrator to customer, held violative where Ee was experienced salesman with unexceptionable performance record and E was attempting to harass Ee and cool ardor of all Ees for U representation)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. 620 F.2d 720 (C.A. 9, 1980)
(violation where moving cause for discharge of instructor was his remarks to student group regarding ongoing labor dispute rather than for disparagement of E, as alleged)

8387-2600 Violation of confidentiality

Bullock's 251 NLRB No. 082
(discharge of Ee assertedly for demoralizing E's personnel by having copies of performance reviews in her possession and discussing them with fellow Ees, not unlawful, where dischargee surreptitiously and wrongfully obtained and copied fellow Ee's review, disseminated reviews' contents to another Ee, advising latter that her review was unfavorable in comparison with others, and dischargee's remarks leading Ee to believe that her job could be in a precarious position support conclusion that dischargee's conduct had disruptive and demoralizing effect on E's personnel)

8387-2800 Dissension with other employees

8387-2850 Not real reason

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

8387-3200 Falsification of production or timecard

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

8387-3250 Not real reason

Magnesium Casting Company, Inc. 250 NLRB No. 107

8387-3250—Cont.

(discharge of known U adherent assertedly for cheating on his production count, unlawful in view of Ee's hostility to U, uncertain nature of evidence that Ee had cheated, minimal amount involved, failure to follow standard warning policy, Ee's record as top operator, fact that no operator had been discharged for such offense over 10 year period, and summary nature of discharge)

Grimes Manufacturing, Division of Midland-Ross, Inc. **250 NLRB No. 041**

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of U advocate-waiter, who had served as interpreter for U organizing committee assertedly for error in his sign-in time on time sheet, violative, where time sheet was closely monitored by headwaiter and testimony of headwaiter and manager to effect they had no knowledge of U waiter's U activity, was discredited)

Earl Kuhns d/b/a Frenchy's K

8387-3400 Falsification of insurance claim

8387-3450 Not real reason

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

8387-3500 Falsification or alteration of employer's records

Pacific Intermountain Express **250 NLRB No. 180**
(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports; E promptly questioned the three Ees and discharged them when 2 refused to answer and 1 answered untruthfully)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(discharge of U advocate for falsifying work order 4 days prior to his termination, not violative notwithstanding Ee was discharged on same day he solicited for U; no evidence in record that anyone responsible for Ee's discharge knew that he engaged in U activity)

8387-3600 Making embarrassing or harmful statements about employer

8387-3650 Not real reason

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

8387-3800 Going into other departments

Anco Insulations, Inc. **247 NLRB No. 081**
(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

8387-3850 Not real reason

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of known U adherents for absence from their work area, unlawful, where they were absent no longer than 10 minutes during their break period, their casual greeting of other Ees in another department did not constitute a work interruption, and no other Ee had been disciplined for asserted reason)

8387-4000 Hostility or bad attitude toward employer

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

8387-4300 Hot-headed, surly, and ill-tempered

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

8387-4400 Improper attire at work

8387-4450 Not real reason

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of bartender-U adherent, assertedly for being away from his work, using customers', rather than Ees', restroom and not being properly attired held violative where shifting reasons were adopted by E to conceal discriminatory motive)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff and offered Ee adherent severance pay to induce her to seek other employment)

8387-4500 Inefficiency

8387-4550 Not real reason

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(violation where Ee was terminated assertedly because his efficiency and performance deteriorated)

8387-4600 Malingering

Keister Coal Company, Inc. **247 NLRB No. 049**
(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

8387-4700 Violating specific instructions concerning work

8387-4750 Not real reason

Peavey Company **249 NLRB No. 110**
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(discharge of waitress, assertedly for refusing to abide by restaurant rules, engaging in gum chewing, and using business phone for personal calls, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

8387-4800 Insubordination

Amber Delivery Service, Inc. **250 NLRB No. 016**
(refusal to perform required task)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, intefered with foreman's job performance)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, interfered with foreman's job performance)

IML Freight, Inc. **249 NLRB No. 111**
(E's threat of termination to U steward, not unlawful, where U steward refused to return to work after discussion about grievance)

Bechtel Incorporated **248 NLRB No. 158**
(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Leeson Electric Corporation **247 NLRB No. 203**
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

8387-4800—Cont.

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

Signode Corporation **JD-161-80**
(discharge for public racially offensive insubordination toward supervisor, not unlawful)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(no violation, where E was discharged for insubordination and not because of her support of U)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(no violation, where E was discharged for insubordination and not because of her support of U)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(one-week and part-day suspension of discriminatee reinstated pursuant to Bd order after his initiating Bd proceedings not unlawful where suspensions were due to discriminatee's failure to follow E's instructions, substandard production, and unresponsive attitude)

8387-4850 Not real reason

Clayton Construction Corporation **250 NLRB No. 121**
(U steward's assertion that E's work assignment was contrary to contract and demand that it be rescinded found not insubordination meriting discharge)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(discharge of waitress, assertedly for insubordination, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

Lane Trenching, Inc. **247 NLRB No. 183**
(discharge of admittedly *good* Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(refusing to follow work instructions)

Dick Seidler Enterprises, d/b/a Joe

8387-4900 Emotional outburst

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

8387-5000 Interference with other employees

8387-5050 Not real reason

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(incident was a minor one not warranting discharge)

8387-5300 Leaving early

B. N. Beard Company **248 NLRB No. 016**
(discharge of truckdriver for quitting work early w/o permission, not unlawful, where Ee did so knowing that E was under pressure for economic reasons to have as much hauling work done as possible on day Ee left early)

Cedarwood Care Center **JD-(SF)-315-79**
(walking off job w/o complying with order to report to supervisor proper grounds for discharge)

8387-5350 Not real reason

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(discharging card signer shortly before Bd-conducted election assertedly because of his early departure, violative in view of E's delay in discharging him, fact that on several occassions prior to his discharge Ee was unlawfully interrogated, and fact that E threatened that plant would shut down if U's campaign were successful)

8387-5500 Loafing

Pacific Intermountain Express **250 NLRB No. 180**
(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports; E promptly questioned the three Ees and discharged them when 2 refused to answer and 1 answered untruthfully)

8387-5550 Not real reason

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

8387-5800 Loss or theft of employer's property

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(reinstate discharged Ee where information leading to discharge obtained during interview at which Ee was unlawfully denied his *Weingarten* rights; notwithstanding Ee confessed to theft of company property during interview as E relied solely on confession in making his decision)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(discharge of Ee, whose U activities were not remarkable, for failure to check on all items being taken out of store by fellow Ee resulting in loss to E found reasonable basis for E's belief in Ee's complicity with fellow Ee's theft or at least that she had been negligent)

Neckover Trailer Manufacturing Company **JD-256-80**
(blatant infraction of rule regarding use of scrap metal by Ees both as it related to use of material for own purposes and taking of material from plant)

8387-6000 Neglect of work

Logan Coca Cola Bottling Company **250 NLRB No. 164**

Schwebel Baking Company **249 NLRB No. 005**
(termination of U steward held lawful for refusal of proper order to return to work during walkout over firing of fellow worker, rather than for his handling of discharged fellow worker's grievance as alleged)

Norym Company, Inc. **JD-847-79**
(discharge of Ees, not unlawful, since for excessive restroom breaks rather than for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

8387-6050 Not real reason

L. R. Bob Spillers Painting Co. **JD-(SF)-169-80**
(discharge of Ee for vigorous pursual of duties as U steward violative)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(discharge of driver purportedly for leaving his bus unattended during working hours, unlawful, where alleged conduct occurred at least 1 or more months prior to discharge, and other Ees were routinely *guilty* of similar infractions w/o being disciplined or discharged therefor)

8387-6300 Negligence

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(discharge of Ee, where U activities were not remarkable, for failure to check on all items being taken out of store by fellow Ee resulting in loss to E found reasonable basis for E's belief in Ee's complicity with fellow Ee's theft or at least that she had been negligent)

Tartan Marine Company **247 NLRB No. 073**

8387-6300—Cont.

(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Keister Coal Company, Inc. **247 NLRB No. 049**
(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

8387-6350 Not real reason

Lyman Steel Company **249 NLRB No. 040**
(discharge of U advocate assertedly because his machine had suffered oil leak held violative where other Ees were not punished for same offense and disparate treatment followed E's threat of reprisal for Ee's U activity)

8387-6400 Unwarranted complaints against supervisory personnel

8387-6450 Not real reason

Savannah Wholesale Company **251 NLRB No. 087**
(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

8387-6500 Use of obscenity or profanity or engaging in other indecent conduct

Hotel St. Moritz, Inc. **251 NLRB No. 015**
(no violation where E filed charges seeking discharge of hotel housemen's U delegate because of his threats and derogatory remarks to E when latter questioned his delegate status at E's meeting with lobby porter concerning porter's changing from membership in his own U to membership in delegate's U; accepting, *arguendo*, E's obligation to recognize and deal with delegate as representative of porter, who belonged to another U, delegate's actions were nevertheless so opprobrious as to render his conduct unprotected)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, intefered with foreman's job performance)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, interfered with foreman's job performance)

Coastal Volkswagen, Audi **JD-(SF)-144-80**
(no violation where Ee who had felony record was fired not when E first learned of his U activity, but only after E learned of his personal conduct involving incident of heated and profane argument about burglary of which Ee was a strong suspect)

8387-6550 Not real reason

I/O Optics Limited, U.S.A. **251 NLRB No. 037**

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(vulgar language used by Ee toward his supervisor found to be pretextual reason for discharge where such language had been used in past with no discipline being imposed and Ee was actively engaged in U solicitation)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E attempted to magnify common use of profanity in plant into dischargeable ofense)

8387-6700 Refusal to accept job assignment or promotion

Church's Fried Chichen, Inc. **JD-(SF)-301-79**

8387-6750 Not real reason

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E attempted to magnify simple complaint about a job assignment into a refusal to perform the job)

8387-6800 Refusal to work overtime

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's discharging Ees for refusing to work overtime, not unlawful, notwithstanding fact that U objected to absence rule, where E's institution of absence rule was found to be lawful)

8387-7000 Profanity or abusive language used against supervisor

Clark Equipment Company **250 NLRB No. 178**
(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

8387-7050 Not real reason

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

8387-7100 Harassing, threatening, etc. of supervisors

Thermo King Corporation **247 NLRB No. 048**
(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

8387-7400 Refusal to work assigned hours

8387-7450 Not real reason

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

8387-7500 Sales record low

8387-7550 Not real reason

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

8387-7800 Sleeping on job

Savannah Wholesale Company **251 NLRB No. 087**
(discharge of Ee assertedly for sleeping on job, not unlawful, even taking into consideration fact that Ee brought U into plant, E had knowledge of his U activity, and discharge occurred in same month that first U meetings were held for Ees; sleeping on job was actual cause of discharge, and there was no evidence of condonation or evidence that other Ees were permitted to engage in such activity)

Sweetheart Cup of Texas **251 NLRB No. 057**

8387-7850 Not real reason

American Metal Processing Company **JD-159-80**
(discharge of known U organizer allegedly for sleeping on job, unlawful since, under ordinary circumstances, this was not dischargeable offense and a few days later another Ee was caught sleeping while still on the clock, and nothing happened to him)

8387-8000 Smoking

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(Ee was discharged for smoking on job and not because of U activity, where Ee had once been previously warned about smoking w/i work area, he admitted he was smoking near solvent container, an Ee had previously been burned by solvent coming into contact with hot engine, and E had been warned by fire officials regarding smoking in work area; moreover, there was no prior history of trouble between E and U)

8387-8050 Not real reason

Custom Wood Interiors, Inc. **248 NLRB No. 023**

(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

8387-8500 Troublemakers and agitators

8387-8550 Not real reason

Levi Strauss

8387-8800 Uncooperativeness

Pacific Intermountain Express **250 NLRB No. 180**

(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports; E promptly questioned the three Ees and discharged them when 2 refused to answer and 1 answered untruthfully)

8387-8850 Not real reason

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**

(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

8387-9000 Union or other concerted activity no defense

Tartan Marine Company **247 NLRB No. 073**

(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

8387-9300 Unsatisfactory work

La Habra Dodge, Inc. **251 NLRB No. 001**

(discharge of Ee mechanic at automobile dealer for doing faulty work, not unlawful, where E had no knowledge of Ee's U activities)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**

(discharge of formerly striking Ee assertedly for failing to detect errors in vehicular rental contracts made by other ex-strikers, unlawful, where there was no evidence that Ee exercised less scrutiny in reviewing work of ex-strikers than nonstrikers, and Ee's even-handedness is apparent from long period of time it took E to build case against her)

State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company **JD-176-80**

(discharge of U adherent, not unlawful, where Ee repeatedly showed poor judgment in preparing estimates for automobile repair claims)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(discharge of U adherent who was poor Ee not violative where E had decided to discharge Ee before it had any knowledge of U activity)

387-9350 Not real reason

Savannah Wholesale Company **251 NLRB No. 087**

(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

(layoff of Ees assertedly because they devoted too much time in repairing E's vehicle as result of which customer was not serviced, unlawful, where Ees were known active U supporters, they had attended U meeting shortly before layoff, and E had profound U animus)

Peavey Company **249 NLRB No. 110**

(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

(discharge of Ee w/i very short time E knew Ee was U officer held violative where E's reasons for discharging Ee were shifting and somewhat contradictory)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**

(violation where Ee was terminated assertedly because his efficiency and performance deteriorated)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(Ee's mistakes on job were isolated, and similar mistakes were not subject of warnings or discharge and were not uncommon at plant)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**

(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

World Wide Press, Inc. **JD-(SF)-12-80**

(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**

(Ee's performance and attitude)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(E's statement to supervisor that he should find out who had been talking about U and get rid of her proof that motivation was illegal and fact that discriminatee was poor Ee irrelevant)

8387-9500 Violence or threat thereof

Clark Equipment Company **250 NLRB No. 178**

(no violation by discharge of leader of U organizing campaign for so recklessly driving truck that he struck a plant security officer and later threatened to *get him*)

Clark Equipment Company **250 NLRB No. 178**

(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

Magnesium Casting Company, Inc. **250 NLRB No. 107**

(physical assault upon supervisor held cause for discharge, where discharge was immediate and spontaneous reaction to attack, a normal reaction of supervisor with such authority, regardless of aggressor's U sympathies)

Schwebel Baking Company **249 NLRB No. 005**

(discharge of U steward held lawful for assault on company official, rather than, as alleged, for carrying out his duties as U steward)

Thermo King Corporation **247 NLRB No. 048**

(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

Routh Packing Company, Inc. **247 NLRB No. 053**

(requirement of reinstatement held precluded by picketer's threats of bodily harm to nonstriker's wife and participation in threats to nonstriker)

Neckover Trailer Manufacturing Company **JD-256-80**

(threats against supervisors)

8387-9550 Not real reason

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**

(discharge of formerly striking Ee after engaging in fight with nonstriker, unlawful, where fight had been arranged by E as device to purge Ee, in view of E's animus toward ex-strikers and general predisposition to discharge them, E's encouragement of conduct to provoke Ee into violent conduct, and haste with which Ee was fired while nonstriker was not even warned about his part in fight))

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**

(discharge of formerly striking Ee assertedly for threatening violence against E's wife and house, unlawful, where Ee's denial of threat was credited, prior to discharge E made statement that he would have gotten rid of Ee but for U, and E exhibited virulent hostility toward ex-strikers generally)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

Lester Industries, Inc. **JD-97-80**

(suspension of chief U protagonist purportedly for threatening anti-U fellow Ee, unlawful, where E seized upon anti-U Ee's belated, implausible account of purported threat as pretext for suspension of Ee for engaging in U organizing and protected concerted activity)

8387-9800 Sabotage

AAR Technical Service Center **249 NLRB No. 176**

8387-9900 Other

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of Ee for engaging in *horse play* with air hose, which was potentially dangerous to fellow Ee, not unlawful, where E investigated incident, thereupon reduced discharge to suspension, and exercised reasonable exercise of its business judgment in maintaining proper discipline with due regard for safety of its Ees)

8390 UNSATISFACTORY QUALIFICATIONS OR CHARACTERISTICS

8390-3300 Failure to qualify for bond or insurance

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(Bd's finding that discharge of Ee violative not supported by substantial evidence where his driving record resulted in problem in insuring him; further, ALJ's finding that there was insufficient evidence of discriminatory motive entitled to weight)

8390-3350 Not real reason

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

8390-5000 Incompetence

8390-5050 Not real reason

Lane Trenching, Inc. **247 NLRB No. 183**
(discharge of admittedly *good* Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

8390-7500 Failure to qualify due to government regulation

8390-7550 Not real reason

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(Ee underage to be employed in hazzardous occupation)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

8393 VIOLATION OF RULES AND STANDARDS

8393-0100 Generally

8393-0166 Rule invalid

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

8393-2500 Discipline always meted out for breach of rule

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

8393-5000 Types of rules

8393-5027 No-solicitation and/or no-distribution

Neptune Waterbeds, Inc. **249 NLRB No. 168**
(discharge of U adherent not unlawful where he was shown to have many work-related problems including solicitation in working areas of plant in violation of no-solicitation rule)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purposes proscribed by rule were tolerated at plant)

8393-5030 Confidentiality

Texas Instruments Incorporated **247 NLRB No. 037**
(discharges based on E's invalidly applied dissemination of classified material rule, violative, since Ees were penalized for asserting their statutory rights by publishing confidential area wage survey; application of rule interfered with those rights and tended to inhibit Ees' protected activity)

8393-5045 Reporting absences

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(discharge of waitress, assertedly for failure to call in on disignated day off, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

8393-5048 Break time or use of restroom

Norym Company, Inc. **JD-847-79**
(discharge of Ees, not unlawful, since for excessive restroom breaks rather than for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

8393-5050 Safety Rules

Vogt-Conant Co. **248 NLRB No. 027**
(discharge of truckdriver who was guilty of numerous incidents of improper and unsafe driving during his period of employment, not violative, notwithstanding that previously Ee was threatened with discharge if he persisted complaining about E's elimination of certain contractual overtime payments; E had in past discharged other Ees for unsafe driving, E bore no animus against complaining Ees generally, and Ee ceased his protests 3 weeks before his discharge and gave E no further cause for concern)

Leeson Electric Corporation **247 NLRB No. 203**
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

8393-5060 Rule regarding searching employees property

Stanley M. Feil, Inc. **250 NLRB No. 065**
(discharge of U adherent for refusing to allow her purse to be searched by supervisor, rather than by security guard, upon leaving Es warehouse, not violative, absent discriminatory motivation; fact E's vice-president offered to reemploy adherent and then withdrew offer not evidence of discriminatory motivation where withdrawal because vice-president felt personally insulted)

8393-5063 Rule against leaving work without permission

Levi Strauss

8393-5065 Rule concerning employees' personal use of company material

Neckover Trailer Manufacturing Company **JD-256-80**
(blatant infraction of rule regarding use of scrap metal by Ees both as it related to use of material for own purposes and taking of material from plant)

8393-5072 Rule against wearing union insignia

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while she was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

8393-5083 Rule concerning work assignments

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

8393-5085 Rule against personal conversations during working time

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

8393-5086 Rule against use of profanity or improper behavior

Thermo King Corporation **247 NLRB No. 048**
(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

8396 VOLUNTARY QUIT OR LAYOFF

La Habra Dodge, Inc. **251 NLRB No. 001**
(held voluntary quit and not constructive discharge notwithstanding painter's helper in accordance with industry custom assumed he too was terminated when E discriminatorily discharged painter with whom he worked as E never discharged helper and E was his E and not painter)

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(E's insistance that U adherent with back injury had quit his job rejected and held constructive discharge where Ee was injured on job, notified E, saw physician and received workman's compensation)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(defense that Ee (U card signer) *quit* rather than was discharged for U activity, rejected where E not allowed to return to work from being off sick after E knew Ee was U adherent)

Sentry Investigation Corp. **249 NLRB No. 130**
(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge even in absence of words; where such can be reasonably inferred from circumstances)*

Conagra, Inc. **248 NLRB No. 085**
(elimination of U adherent's job as *bathroom relief,* not unlawful, where necessity for position was eliminated by remodeling, adherent was offered another job by E but rather, than bump incumbent took voluntary layoff and went on unemployment compensation, and upon expiration of unemployment benefits returned to work in another position)

8399 GRIEVANCE/ARBITRATION PROCEEDINGS AND/OR AWARD

Newspaper Printing Corporation **JD-203-80**
(while failure to arbitrate discharge violative of 8(a)(5), ALJ refused to rule on whether discharge itself violative of 8(a)(3) where GC failed to allege discharge violation of Act and GC's position that parties should be required, as remedy for 8(a)(5) violation to go to arbitration concerning discharge)

530 EMPLOYER OBLIGATION TO BARGAIN

0100 GENERALLY

0167 APPROPRIATENESS OF UNIT AS PREREQUISITE

N.T. Enloe Memorial Hospital **250 NLRB No. 078**

(withdrawal of recognition and refusal to bargain because of doubt as to appropriateness of bargaining representative violative where in fact association was appropriate organization for collective bargaining)

A-1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. **250 NLRB No. 034**

(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable waiver* standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

2000 CONDITIONS PRECEDENT TO OBLIGATION TO BARGAIN

2025 REQUEST FOR RECOGNITION AND BARGAINING

2025-0100 Generally

2025-0167 Bargaining demands not waived by filing petition

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

(filing of representation ptn is not proper demand for recognition or bargaining)

2025-0183 Request not necessary where futile

Sunnyland Refining Company, Inc. (International Brotherhood of Boilermakers, Shipbuilders, Forgers and Helpers, AFL-CIO) **250 NLRB No. 146**

(once U requests bargaining and an E states it is refusing to bargain in order to test the certification, it is futile and unnecessary for U to continue to request bargaining)

2025-0190 Failure to request

Grandee Beer Distributors, Inc. **247 NLRB No. 163**

(E did not violate Act by refusing to bargain where U never made proper demand for bargaining in an appropriate unit)

2025-5000 Forms of request

Magnesium Casting Company, Inc. **250 NLRB No. 107**

(U's demand for recognition held inadequate where it was made vocally through bull horn during course of rally in front of E's premises, and it was not established that responsible officials of E were aware of demand)

2025-6700 Continuing request

Dardanell Enterprises, Inc. **250 NLRB No. 050**

(*Bd treats request as continuing, at least for period of certification year* further *explicit refusal to bargain made in order to test certification will be considered as continuing refusal to bargain*)

2050 Majority status of representative

2050-1200 Majority status as prerequisite

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**

(E held obligated to recognize and bargain with U for prospective as well as current jobsites, since (a) E's Ees had tendered their designation cards w/i determinative payroll period, and (b) U had signed authorization cards from majority in unit of E's permanent Ees when it demanded recognition, so that contract was not 8(f) prehire contract valid only for current jobsite as E contended)

2050-2500 Determination of status

Saks

2075 PROOF OF DESIGNATION

2075-0100 Generally

Carlina Knitting Co., Inc., et al. **JD-321-80**

(card signed after demand not to be counted)

2075-0175 Testimony of employees or union representative

Tartan Marine Company **247 NLRB No. 073**

(lost card not counted since w/o card it cannot be determined if individual authorized U to represent him on any of the critical dates litigated)

2075-6700 Authorization cards

2075-6701 Generally

Carlina Knitting Co., Inc., et al. **JD-321-80**

(card of Ee sent to seek employment with E in effort to organize plant should be counted and she should be included in unit, where there was no evidence that she took job solely to organize, that her job was only temporary or that she was not bona fide full-time Ee; she had same duties, worked same hours and earned same rate of pay as any other unit Ee)

2075-6717 Form of card

2075-6717-3300 Single purpose designation of representatives

Tartan Marine Company **247 NLRB No. 073**

(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

2075-6733 Proof of validity

2075-6733-2000 Method of authentication

2075-6733-2014 Testimony of solicitor

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**

(where signer identified card and signature, fact that solicitor did not witness his signature does not invalidate card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(although solicitor did not witness signing of Ee's card, solicitor's testimony that Ee delivered completed card to him indicates that Ee designated U)

2075-6733-2028 Testimony of signer

Pilgrim Life Insurance Company **249 NLRB No. 140**

(card counted which did not bear signer's signature, but rather her name printed, when submitted, where U later obtained her signature on another card and Ee testified and identified original card as hers)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**

(validity upheld where Ee testified to signing and returning card to U, notwithstanding U either never received it or misplaced it)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**

(where Ee identified card and signature fact that signature printed rather than written in script does not invalidate card)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**

(where signer identified card and signature, fact that solicitor did not witness his signature does not invalidate card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(card questioned as to whether it was signed before U's demand for recognition not counted in view of signer's inconsistent testimony, fact that he did not know date, and GC's failure to call signer to elucidate matter)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(Ee's card which was lost counted as valid designation of U when he testified he signed card and his name appeared on E's list of U supporters who had identified themselves as such to E; testimony of Ee is itself probative of U's majority status in circumstances where card has been misplaced)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(where Ee had signed second card after U's demand for recognition, his first card signed prior to U's demand counted as valid designation of U, even though such card was lost, where E testified that he signed card before demand date and his testimoney was corroborated by other evidence)

2075-6733-2028—Cont.

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although misdated, card held valid where Ee credibly testified she signed card well before date of U's demand for recognition, and signer's name appeared on E's list of U supporters dated prior to U's demand)

2075-6733-2056 Testimony of witness to signing

Amber Delivery Service, Inc. **250 NLRB No. 016**

2075-6733-2070 Signature comparisons

Permanent Label Corporation **248 NLRB No. 021**
(signature comparisons done by handwriting expert proper method of authenticating cards)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to date because assertedly bearing handwriting style of date different from that of telephone number on card held valid since writing sample taken at trial showed no significant difference from that of date on card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card held invalid where there was some discrepancy between signature on Ee's card and her W-4 form, Ee's name did not appear on E's list of U supporters, and there was no other corroborating testimony from Ee)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(even though Ee's testimony and comparison of his signature on W-4 form as well as other documents left considerable doubt as to who signed card, card held valid where Ee's U activity and presence of his name on E's list of U supporters is *convincing* and *reliable* evidence of Ee's designation of U)

Consumer Enterprises, Inc. **JD-342-80**
(card not counted where signature on card and signatures on W-2 form and payroll checks showed total lack of similarity)

2075-6733-2084 Due course delivery of card to union

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(notwithstanding Ee denies mailing card, validity upheld where U in possession and pretrial affidavit contains admission that Ee mailed card)

2075-6733-4000 Adequacy of card on its face

2075-6733-4017 Unsigned or missigned cards

Pilgrim Life Insurance Company **249 NLRB No. 140**
(card counted which did not bear signer's signature, but rather her name printed, when submitted, where U later obtained her signature on another card and Ee testified and identified original card as hers)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where Ee identified card and signature fact that signature printed rather than written in script does not invalidate card)

2075-6733-4050 Undated or misdated cards

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(card dated 1 day earlier than its actual execution found valid where otherwise properly authenticated as such minor variances do not affect validity of card)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(card dated one month after date when U was alleged to have had majority status shown to have been misdated one month later than date when actually signed)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although misdated, card held valid where Ee credibly testified she signed card well before date of U's demand for recognition, and signer's name appeared on E's list of U supporters dated prior to U's demand)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to date because assertedly bearing handwriting style of date different from that of telephone number on card held valid since writing sample taken at trial showed no significant difference from that of date on card)

2075-6733-4059 Cards dated subsequent to date of request

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to whether it was signed before U's demand for recognition not counted in view of signer's inconsistent testimony, fact that he did not know date, and GC's failure to call signer to elucidate matter)

2075-6733-4067 Language of card

Tartan Marine Company **247 NLRB No. 073**
(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(cards which clearly and concisely stated that signer wanted U, held valid)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(authorization cards which clearly and unequivocally on their face authorized U to represent Ees not invalidated by U's representative's explanation of Bd's requirements for election, nor would his informing Ees that he could not file ptn w/o signatures of 80% of Ees invalidated cards since he was merely stating his personal opinion or internal U rule designed to improve chance of success of campaign)

2075-6733-9000 Unrevoked authorizations

Consumer Enterprises, Inc. **JD-342-80**
(card not revoked where Ee failed to notify U for revocation of card prior to U's request for recognition)

2075-6733-9500 Untimely revocation/withdrawal of card

Alumbaugh Coal Corporation **247 NLRB No. 112**
(Ees' request for revocation of his card dated day after U had majority status did not affect majority status on prior date)

2075-6767 Circumstances impeaching validity of cards

2075-6767-0100 Generally

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(revocations of authorization cards not recognized where occurred after E's program of ULPs began)

2075-6767-0150 Testimony of employees as to subjective intent of own designtion not admissible

Carlina Knitting Co., Inc., et al. **JD-321-80**
(subjective testimony adduced at hearing held unreliable and does not prove that Ees, when they signed card, did not want U, or that they were tricked into signing cards)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

2075-6767-0800 Misrepresentation in solicitation

2075-6767-0814 For election only

Stanley M. Feil, Inc. **250 NLRB No. 065**
(card not counted where Ee informed it was to be used only to achieve election and that sole purpose of card was to get election; however, another card subsequently signed by same Ee counted where signed at time U officials present and no statements made that cards for sole purpose of obtaining election)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(statement that purpose of card is to make election possible is insufficient to render invalid unambiguously worded card)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**

C

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where language on card is unambiguous and provides that signer authorizes U to represent him, fact that solicitor alluded to use of card in obtaining election not enough to impeach validity of card because Ees were in no way directed to disregard express language on cards or otherwise assured that cards would only be used for purpose of getting election)

Tartan Marine Company **247 NLRB No. 073**
(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(authorization cards which clearly and unequivocally on their face authorized U to represent Ees not invalidated by U's representative's explanation of Bd's requirements for election, nor would his informing Ees that he could not file ptn w/o signatures of 80% of Ees invalidated cards since he was merely stating his personal opinion or internal U rule designed to improve chance of success of campaign)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(U's statement that cards would be presented to E to show Ees wished to be represeted by U and if majority of Ees signed cards, there would be an election not statement that card was to be used solely to get an election)

2075-6767-0842 Ambiguous statement

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(statement to Ee that signing card did not mean he was joining U but just to get U representative to explain purpose of U at meeting not sufficient to cancel unambiguous language on card which Ee read)

2075-6767-0884 Other

Consumer Enterprises, Inc. **JD-342-80**
(no misrepresentation where statements made by U representative did not contradict message of card; Ee was clearly told that purpose of card was for U to take up fight with management for salary benefits)

2075-6767-1600 Coercion in solicitation

2075-6767-1617 Waiver of reduction of fees

Chef's Pantry, Inc. **247 NLRB No. 018**

2075-6767-1617—Cont.

where there is no prima facie showing of limited waiver of initiation fees, there is no requirement on GC to affirmatively prove universal waiver, before or after election)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(authorization cards not invalidated by statements that initiation fees would be $25 if card signed now but would be $50 if signed after U won election where statements were made by rank-and-file Ees absent evidence U initiated, adopted, condoned or was even aware of statements)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(U's accepting authorization cards during organizing campaign w/o requesting initiation fees and in one case w/o requiring monthly dues did not invalidate cards where such arrangements only temporary)

N.L.R.B. v. Mike Yurosek

2075-6767-2500 Inducements or promises in solicitation

Lyman Steel Company **249 NLRB No. 040**
(authorization cards of assisted U no basis for claiming majority support where cards solicited and obtained by management after certain inducements granted to solicited Ees)

2075-6767-3300 Capacity of signer

2075-6767-3317 Inability to read or write

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where wife of illiterate Ee read card to him and signed it upon his direction, card valid as purpose adequately communicated)

2075-6767-4100 Solicitation by supervisors and/or management personnel

Lyman Steel Company **249 NLRB No. 040**
(authorization cards of assisted U no basis for claiming majority support where cards solicited and obtained by management after certain inducements granted to solicited Ees)

2075-6767-6600 Purported withdrawal of card

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(Ee's attempt to withdraw valid authorization card ineffective where revocation came after Ee attended meeting at which E made unlawful threats as E cannot derive benefit from its unlawful conduct)

2075-6775 Lost or misplaced cards

Tartan Marine Company **247 NLRB No. 073**
(lost card not counted since w/o card it cannot be determined if individual authorized U to represent him on any of the critical dates litigated)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(where Ee had signed second card after U's demand for recognition, his first card signed prior to U's demand counted as valid designation of U, even though such card was lost, where E testified that he signed card before demand date and his testimoney was corroborated by other evidence)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ee's card which was lost counted as valid designation of U when he testified he signed card and his name appeared on E's list of U supporters who had identified themselves as such to E; testimony of Ee is itself probative of U's majority status in circumstances where card has been misplaced)

2075-6784 Designation of merged union

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(consolidated U's use of authorization cards designating pre-merger U held not improper, where Ees were well-informed concerning merger and it must be inferred such fact was generally known among Ees, no card signers asked for return of their cards, Ees were not misled as to which U they wanted to represent them, and merger contemplated continuation of pre-merger U under new and different name)

2075-6785 Designation of international rather than local

CAM Industries, Inc. (Millmen-Industrial Carpenters Local 262) **251 NLRB No. 004**
(E's refusal to bargain with U after card check established majority status violative notwithstanding authorization cards designated only International, for Bd has long held that such card serves as valid designation of affiliate when there was no confusion as to identity of potential representative in minds of signers)

3000 EMPLOYER OBLIGATION TO RECOGNIZE ON REQUEST

3001 GENERALLY

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

3067 MAY DECLINE TO RECOGNIZE WITHOUT ELECTION

3067-2500 Unless engaged in ULP precluding fair election

United Services For The Handicapped **251 NLRB No. 117**
(U card majority rather than election provides more reliable test of Ees' R desires where E's ULPs precluded holding of fair election)

Brooks Cameras, Inc. **250 NLRB No. 116**

3067-3700 Where not engaged in ULP precluding fair election

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(no obligation on E to bargain where only ULP charge dismissed and no election held)

3067-5000 Unless having independent knowledge of union majority

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

4000 DURATION OF OBLIGATION TO RECOGNIZE AND BARGAIN

4020 CERTIFIED REPRESENTATIVE

4020-2000 Presumption of continued majority

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter ego's refusal to bargain with certified U violative)

4020-2033 Irrebuttably presumed for 1 year

Pennco, Inc. **250 NLRB No. 093**

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(where the only arguable date when bargaining agreement allegedly was reached between E and U fell w/i first year since Bd certification of U, E's question as to whether or not U represented majority of Ees in appropriate unit held w/o merit; in first year after certification, there is irrebuttable presumption that U has majority in appropriate bargaining unit)

4020-2033-2500 Absent unusual circumstances

Sunnyland Refining Company, Inc. (International Brotherhood of Boilermakers, Shipbuilders, Forgers and Helpers, AFL-CIO) **250 NLRB No. 146**
(eight-month gap between dates of U's requests for bargaining does not constitute such unusual circumstances that would relieve E from obligation to bargain throughout certification year)

4020-2033-5000 Where certification enforced in ULP proceeding, year dates from time employer commences bargaining

Firestone Wire

Mid-America Media, Inc. **248 NLRB No. 165**
(initial period of certification construed as beginning on date E commences to bargain with U as recognized bargaining representative in appropriate unit)

Whitney Museum of American Art **247 NLRB No. 061**

4020-2067 Rebuttably presumed after 1 year

Libbie Convalescent Center a/k/a Libbie Rehabilitation Center, Inc. **251 NLRB No. 116**
(withdrawal of recognition 7 days following end of certification year violative absent actual evidence that U no longer represented majority of Ees)

Hospitality Motor Inn, Inc. (Hotel

Pennco, Inc. **250 NLRB No. 093**

P. A. Incorporated **248 NLRB No. 077**
(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

N.L.R.B. v. Triplett Corporation **619 F.2d 586 (C.A. 6, 1980)**
(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

4020-6000 Certification by other agency

Taylor Hospital **249 NLRB No. 031**
(refusal to bargain, unlawful where certification by state labor board met Bd's standards for granting comity and there was no newly discovered evidence presented or lack of due process or other grounds found for refusing comity, and long passage of time since certification due to E's exhausting its remedies, does not warrant relieving E of its bargaining obligation)

4025 REPRESENTATIVES UNDER CONTRACT

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

4025-2500 Majority status irrebuttably presumed during term of contract

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Petroleum Contractors, Inc. **250 NLRB No. 094**

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

4025-5000 After expiration of contract

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(where E had negotiated contract and it was automatically renewed, E's withdrawal of recognition and repudiation of contract's terms held unlawful for period after expiration of renewal period as well as period before expiration)

Petroleum Contractors, Inc. **250 NLRB No. 094**

Roza Watch Corp. **249 NLRB No. 036**
(refusal to recognize and bargain with certified U after expiration of contract, violative where E failed to rebut presumption or sustain good faith doubt of U's continued majority support following expiration of contract)

The Workshop, Inc. **JD-230-80**
(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's after E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(repudiation of contract unlawful, where 8(f) pre-hire agreement was transformed into bargaining agreement when U achieved majority status in relevant bargaining unit composed of Ees at E's two construction projects rather than on project by project basis, and rebuttable presumption of continuing majority status applied to unit notwithstanding potential change in its Ee composition and eventual relocation to other, future projects)

4040 Voluntarily recognized representatives

4040-5000 Presumption of majority status

D'Angelo

The Saloon, Inc. **247 NLRB No. 156**
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

4040-5037 Contract creates irrebuttable presumption of continuing majority status of union

N.L.R.B. v. West Sand and Gravel Company **612 F.2d 1326 (C.A. 1)**
(enforcement of bargaining order denied where Bd's presumption of majority status was found to be unreasonable since clear and objective understanding of scope of bargaining unit or desire to engage in genuine collective bargaining was not evidenced in explicit agreement nor actual practice of E and Ees in past)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(withdrawal of recognition from U two months before expiration of its one-year bargaining agreement, violative even if replacement of discharged unit Ees gave rise to E's asserted good faith doubt as to U's majority; incumbent U enjoys virtually irrebutable presumption of majority status as long as its bargaining agreement is entitled to *contract bar* protection)

4040-5037-5000 Contract of predecessor employer

Saks

4040-5042 Presumption resulting from long bargaining history

N.L.R.B. v. West Sand and Gravel Company **612 F.2d 1326 (C.A. 1)**
(enforcement of bargaining order denied where Bd's presumption of majority status was found to be unreasonable since clear and objective understanding of scope of bargaining unit or desire to engage in genuine collective bargaining was not evidenced in explicit agreement nor actual practice of E and Ees in past)

4075 TERMINATION BY WITHDRAWAL OF RECOGNITION

Libbie Convalescent Center a/k/a Libbie Rehabilitation Center, Inc. **251 NLRB No. 116**
(withdrawal of recognition 7 days following end of certification year violative absent actual evidence that U no longer represented majority of Ees)

Cablevision Systems Development Company, A Partnership **251 NLRB NO. 176**
(violation where cable TV company had entered into negotiations with U representing cable company's subcontractor, and upon becoming subcontractor's successor, as found herein, it withdrew recognition and refused to bargain with U)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(where E had negotiated contract and it was automatically renewed, E's withdrawal of recognition and repudiation of contract's terms held unlawful for period after expiration of renewal period as well as period before expiration)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(multi-E association's counterproposal for contract renewal with unwavering demand that lounge musicians be excluded from bargaining unit despite their inclusion for past decade held unlawful withdrawal of recognition; belief that lounge musicians were independent contractors and U's agreement to defer lounge musicians issue does not justify or legitimaze E's withdrawal of recognition)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter-ego E who required rehired Ees to sign agreement stating that all fringe benefits would be paid directly to them instead of U and to hold them responsible for transfer of monies to U violated Act)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

P. A. Incorporated **248 NLRB No. 077**
(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

B. N. Beard Company **248 NLRB No. 016**
(E unlawfully withdrew recognition from Us before expiration of their contracts with E as evidenced by E's statements to the effect that E was getting rid of Us and would have no further contact with them)

The Saloon, Inc. **247 NLRB No. 156**
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(E's refusal to meet or arrange for future bargaining sessions after voluntarily recognizing U and agreeing to meet constituted unlawful withdrawal of recognition and refusal to bargain)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Prairie Glove Division, Advance Glove Company **JD-164-80**

4075—Cont.

(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue*, or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

Atlan Inc. **JD-890-79**
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

N.L.R.B. v. Triplett Corporation **619 F.2d 586 (C.A. 6, 1980)**
(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequent withdrawal of recognition from Teamsters local, violative, since Teamsters local wascontinuation of Brewery Workers local)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequent withdrawal of recognition from Teamsters local, violative, since Teamsters local was continuation of Brewery Workers local)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

4080 TERMINATION OF OBLIGATION BY EMPLOYER BECAUSE OF REPRESENTATIVE'S LOSS OF MAJORITY STATUS

4080-0100 Generally

4080-0125 Belief in loss of majority must be based upon objective consideration

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

Hospitality Motor Inn, Inc. (Hotel

Tri-State Carpenters

Petroleum Contractors, Inc. **250 NLRB No. 094**

Prairie Glove Division, Advance Glove Company **JD-164-80**
(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue*, or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

4080-0150 Belief must be held in good faith and not advanced to gain time to undermine union

N.L.R.B. v. Scott Printing Corporation and J

4080-0175 Withdrawal of recognition must be at appropriate time in relation to

4080-0175-8000 Contract

4080-0175-8033 Refusal to negotiate renewal of contract while continuing recognition under current one

The Workshop, Inc. **JD-230-80**
(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's after E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

4080-5000 Objective Considerations Evaluated in Establishing Employer's Doubt of Majority Status

4080-5012 Employer's information concerning employee dissatisfaction with union

4080-5012-1700 Through statements of employees

Hospitality Motor Inn, Inc. (Hotel

The Saloon, Inc. **247 NLRB No. 156**
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

Prairie Glove Division, Advance Glove Company **JD-164-80**
(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue*, or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

4080-5012-4000 Poll by employee

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

4080-5012-6700 Written communications from employees

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

4080-5012-9900 From other sources

Hospitality Motor Inn, Inc. (Hotel

4080-5018 Employee support or lack thereof of incumbent's strike

Pennco, Inc. **250 NLRB No. 093**
(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

4080-5024 Checkoff authorizations

4080-5024-5000 Pursuant to union security

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

4080-5024-6700 Decrease in authorizations

N.L.R.B. v. Triplett Corporation **619 F.2d 586 (C.A. 6, 1980)**

4080-5024-6700—Cont.

(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

4080-5030 Internal union activities as evidence of lack of support

4080-5030-5000 Nonmembership in Union

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

4080-5042 Union animus

4080-5042-3300 Employer's ULP as affecting asserted reasonable grounds

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(E's withdrawal of recognition assertedly because of its doubt as to U's majority status, violative, since U's loss of majority was at least partly attributable to E's refusing to promote and hire U supporters into bargaining unit and engaging in other conduct designed to convey a coercive message to a U member)

4080-5051 Unlawful recognition of and relationship with union

Argano Electric Corp. **248 NLRB No. 049**
(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held *violative of Sections 8(a)(2), (3), (5) and (1) of Act*)

4080-5066 Change in unit composition

4080-5066-2500 Economic turnover

Pennco, Inc. **250 NLRB No. 093**
(fact only 42 striking Ees out of unit of 173 sought reinstatement at conclusion of strike not basis for good faith doubt of majority where E had withdrawn recognition from U 10 months prior to start of strike)

W

4080-5066-7500 Substantial increase in work force

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

4080-5072 Replacement of economic strikers

Pennco, Inc. **250 NLRB No. 093**
(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(withdrawal of recognition, after E had threatened striking Ees with statements that replacements would be hired and that these replacements' seniority would be superior to that of returning strikers, unlawful, where Ees felt continued concern about potential loss of employment)

4080-5084 Decertification movement

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**
(anti U ptn signed by 15 out of 26 Ees in unit not basis for doubt where supervisor had unlawfully solicited signatures)

C. Langenfelder

4080-5088 Loss of election

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(U remains Ees bargaining representative until results of decertification election are certified)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(unilateral granting of raises and changes of Ee status done while validity of decertification election in doubt, violative)

4080-5093 Filing of petition for election by employer

W

4090 TERMINATION OF OBLIGATION BY EMPLOYER BY CHANGED CIRCUMSTANCES

4090-3000 Affiliation with an international union

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**
(E's refusal to bargain with permanent international affiliate of U after two years' recognition as temporary affiliate, unlawful; no qcr arose where affiliation did not effect substantial changes in representation, and separate vote for affiliation was not required because of continuity of representation)

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**
(when collective bargaining representative affiliated with International U and E refused to bargain with U after this point, E violated Act where successor U is same bargaining entity as predecessor U, and since it had right to make its own policy determinations, negotiate contracts, call strikes, and retained right to establish and keep its own dues, local U is autonomous from International; vote in favor of affiliation was unanimous, conformed to U constitution; moreover, fact that vote was not secret or separate vote by unit Ees not held does not negate validity as Us are not held to Bd's own election standards)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequent withdrawal of recognition from Teamsters local, violative, since Teamsters local wascontinuation of Brewery Workers local)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequent withdrawal of recognition from Teamsters local, violative, since Teamsters local was continuation of Brewery Workers local)

4090-5000 Change in unit

C.J.B. Industries **250 NLRB No. 184**
(successor E's purchase of 1 of 2 predecessor's plants did not remove successor's bargaining obligation)

Campo Slacks, Inc. and J

W

4090-7500 Relocation of plant or certain operations

Vitco Steel Supply Corp. **JD-103-80**
(refusal to recognize U at new location unlawful where new operation was substantial continuation of old operation with same Ees)

4800 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYER

4825 OBLIGATION TO RECOGNIZE AND BARGAIN

4825-3300 Alter ego of employer

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation, proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(E's *alter ego's* refusal to recognize and bargain with U for Ees doing unit work previously performed by E, held violative)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(refusal of E alter ego to recognize U with which preexisting E, had contract, unlawful)

4825-5000 Joint or single employer

The Pulitzer Publishing Company v. N.L.R.B. **618 F.2d 1275 (C.A. 8, 1980)**

4825-5000—Cont.

(newspaper publisher had no duty to bargain with U concerning Ees of delivery company providing services to publisher, in view of finding that publisher was not joint E with delivery company)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**

(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

4825-6700 Successor employer

Cablevision Systems Development Company, A Partnership **251 NLRB NO. 176**

(violation where cable TV company had entered into negotiations with U representing cable company's subcontractor, and upon becoming subcontractor's successor, as found herein, it withdrew recognition and refused to bargain with U)

C.J.B. Industries **250 NLRB No. 184**

(successor's avoidance of its obligation to recognize and bargain with its predecessor's U by not hiring predecessor's former Ees who were U members, unlawful)

C.J.B. Industries **250 NLRB No. 184**

(contention that evidence of unlawful motive in hiring should not have been considered with respect to 8(a)(5) claim because no allegation or finding that E violated 8(a)(3) was made held w/o merit, since claim was based upon alleged successorship obligation, and element of continuity or work force between predecessor and successor is critical; GC must show either that E hired or retained requisite complement of former Ees *or* that it decided not to hire former Ees because of their U affiliation)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**

(E held successor and obligated to recognize and bargain with U representing Ees of predecessor where after purshase it continued same operation at same location using essentially same equipment and providing same services to substantially same individuals)

Saks

Saks

Barclay Hospital, Inc. **247 NLRB No. 144**

(successor E held to have unlawfully refused to bargain with U representing predecessor's Ees, notwithstanting contention that successor had no duty under law to bargain with certified U and that U did not represent Ees then on payroll)

Hospital San Miguel, Inc. **JD-287-80**

(where transfer of stock and sale of assets with lease back to E occurried, and hospital's name unchanged, same equipment used, Ees remained same, supervisory staff unchanged, corporate charter unchanged, refusal to bargain with U violative either because Respondent, a corporate entity remained same employing entity, or because E held successor)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**

(E held successor and obligated to recognize and bargain with U where immediately after takeover all Ees in unit were Ees of predecessor E, and notwithstanding flucuation in size of unit during following 77 days, Ees of predecessor constituted majority of unit)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**

(successor E's unilateral changes in wages, unlawful, where majority of Ees in unit were Ees of predecessor E and E had duty to bargain with U before making any changes)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**

(Bd certification not necessary to trigger obligation to bargain of successor E)

W

4825-7500 Change in corporate structure

Owen Lee Floor Service, Inc. **250 NLRB No. 070**

(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation, proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

4850 OBLIGATION TO HONOR CONTRACT

4850-2500 Subsidiaries

Campo Slacks, Inc. and J

4850-3300 Alter ego of employer

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**

(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**

(violation by refusal of alter ego-E to give effect to contract, of its preexisting corporation)

4850-6700 Successor employer

World Evangelism, Inc. **248 NLRB No. 117**

(successor E's failure to honor predecessor's contract with U, unlawful where successor agreed to bind itself to predecessor's contract)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**

(violation, where successor E, who had hired majority of unit Ees of predecessor, unilaterally changed conditions of employment in contract between U and predecessor E, since at time of hiring it did not indicate any intent to change conditions; E's contention it did not employ full Ee complement at time commenced operations rejected, in view of fact complement did not increase)

Saks

Barclay Hospital, Inc. **247 NLRB No. 144**

(although not dealing with all implications of E's argument that it has right not to be successor, Bd noted that *successorship* is a labor relations conclusion derived from economic facts and that a *right* not to become a successor would suggest a right to make employment decisions based on representational rights clearly proscribed by U.S. Sp.Ct. decision)

4850-7500 Joint or single employer

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

U.S. Pipe

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**

(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

5400 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYEE REPRESENTATIVE

5700 MULTIEMPLOYER BARGAINING (SEE ALSO 440-5000)

5701 GENERALLY

Schaetzel Trucking, Inc. **250 NLRB No. 044**

(mere adoption of multi-E contract, not sufficient to make an E part of multi-E unit, absent showing that E indicated unequivocal intention to pursue group course of action with regard to labor relations)

5714 INTENT OF EMPLOYERS

Schaetzel Trucking, Inc. **250 NLRB No. 044**

(E not part of multi-E unit, notwithstanding that E adopted, with modifications, result of negotiations between U and representatives of E members of the unit, where neither E nor E's only representative participated in those negotiations, E gave notice of its intention to pursue separate course of bargaining well in advance of beginning of negotiations, and E's subsequent actions were consistent with its expressed intention to bargain individually)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's refusing to negotiate with E on individual basis, violative, notwithstanding U's claim that it believed E had designated E association as bargaining representative; E had plainly stated its intention to bargain separately with U and not to join association)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**

(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding

5714—Cont.

asserted good faith doubt of majority U status, where E did not notify U of intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no contract with U by implication absent E's application for multi-E association membership, payment of initiation fee, authorization for association to bargain on E's behalf or individual short-form agreement with U)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no contract with U by implication absent E's application for multi-E association membership, payment of initiation fee, authorization for association to bargain for E's label or individual short-form agreement with U)

5742 AUTHORITY OF ASSOCIATION

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E-association informed U that additional contractors had became members, including E, U justified in concluding that E-association had full authority to bargain for this E notwithstanding these additional contractors reserved right to reject contract as this limitation on association's right to negotiate for them was not communicated to U; this apparent authority is sufficient to bind E to agreement reached by E-association absent timely withdrawal)

5770 WITHDRAWAL FROM MULTIEMPLOYER BARGAINING

5770-0100 Generally

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E-association informed U that additional contractors had became members, including E, U justified in concluding that E-association had full authority to bargain for this E notwithstanding these additional contractors reserved right to reject contract as this limitation on association's right to negotiate for them was not communicated to U; this apparent authority is sufficient to bind E to agreement reached by E-association absent timely withdrawal)

5770-2500 Untimely

5770-2550 Where negotiations had begun

Harding Glass Industries **248 NLRB No. 091**
(withdrawal by E of one of its facilities from multi-E bargaining violative even if impasse)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative, since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

5770-2583 Absent unusual circumstances

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative, since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

5770-3100 Unusual circumstances permitting untimely withdrawal

Harding Glass Industries **248 NLRB No. 091**
(impasse not unusual circumstance)

5770-3700 Consent to untimely withdrawal

5770-3733 Consent of union

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

5770-5000 Interim agreements

N.L.R.B. v. Inland Cities, Inc. **618 F.2d 117(T) (C.A. 9, 1980)**
(E who signed interim agreement which bound him to outcome of negotiations by E-association violated Act when it refused to comply with contract; repudiation is not excused because E was motivated by economic necessity)

5800 MULTIUNION BARGAINING

6000 NATURE AND EXTENT OF OBLIGATION AND DUTY TO BARGAIN

6001 GENERALLY

6001-5000 Scope of section 8(d)

6001-5017 Obligation to meet with object of reaching understanding on wages, hours, and other terms and conditons of employment

6001-5017-5000 Obligation during contract hiatus

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(refusal to meet with U after expiration of U's bargaining agreement concerning grievance filed on behalf of unit Ee, violative, since E's continuing past contract obligation includes duty to meet with bargaining representative and discuss unit Ees' grievances)

6001-5025 Continuation of existing terms and conditions pending bargaining

Newspaper Printing Corporation **250 NLRB No. 132**
(unilateral removal of advertisement typesetting work from *composing room* to *job shop*, violative, since this work was customarily performed by *composing room* Ees)

6001-5083 Duty to bargain as to matters not covered by agreement

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

6025 INVESTIGATORY INTERVIEW FOR DISCIPLINARY PURPOSES

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(*Weingarten* protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

6025-5000 Denial of union representation

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

6033 MECHANICS OF BARGAINING

6033-2800 Authority of representative

6033-2850 Must have sufficient authority and knowledge to negotiate effectively

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(violation where all E's representatives made clear to U that they did not have authority to consummate agreement w/o approval of E's president, and E's president did not agree to terms and conditions which had been ostensibly negotiated by E's negotiator with U)

530-EMPLOYER OBLIGATION TO BARGAIN

6033-4200 Composition of bargaining committee

6033-4240 Employer may not refuse to meet with designated representative absent special circumstances

Fitzsimons Manufacturing Company, West Branch Tube Division **251 NLRB No. 053**

(E's refusal to meet and bargain with designated representative for purpose of resolving grievances, not unlawful, where representative physically assaulted E's personnel director during earlier bargaining session in presence of Ee bargaining committee and management officials, and thus justified such refusal since *presence of (this) particular individual would create ill will and make good-faith bargaining impossible;* furthermore, E had met and bargained with other U representatives in interim)

6033-5600 Counterproposals

6033-5650 Obligation to make after proposals

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

6033-6000 Withdrawal of agreed-upon contract proposals

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**

(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

Times-Herald, Inc. **249 NLRB No. 004**

(E's withdrawal of proposals, not unlawful, where U engaged in economic strike causing E to hire permanent replacements and no evidence to show action taken to prevent agreement)

6033-7000 Impasse

6033-7001 Generally

6033-7001-5000 No obligation to continue negotiations after impasse

Patrick

6033-7008 What constitutes

Excavation-Construction, Inc. **248 NLRB No. 081**

National Steel Service Center, Inc. **JD-395-80**

(E's insisting on charge in scope of unit as condition of signing new bargaining agreement and U unequivocally rejecting proposal and maintaining that position, notwithstanding side bar conversations at which U representative stated he was not personally opposed to unit charge)

H. H Fredericksen Co. **JD-(SF)-64-80**

(existence of bargaining impasse was evidenced, among other considerations, by fact that E's conduct, considerd in totality, was not in bad faith; limited number of bargaining sessions did not necessarily warrant finding that deadlock could not have happened since parties had fair and adequate opportunity to reach agreement; E and U recognized that situation was akin to a hiatus and that agreement was unlikely; and U's slightly modified proposals did not reflect concessions significant enough to break deadlock)

6033-7028 Concessions indicate lack of impasse

Times-Herald, Inc. **249 NLRB No. 004**

(E did not insist to impasse that U agree on modification of unit-jurisdiction clause of contract, where E changed its position and offered to agree to language from prior contract)

6033-7056 No impasse

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**

(on ct remand, Bd affirmed ALJ's conclusion that impasse did not exist and that E's conduct in treating U's rejection of its *final offer* as revocation of U's earlier unconditional offer to return to work was w/o merit, where E seized upon Ees' strike as a means of obtaining favorable contract, and its continued bargaining while operating at lower cost by use of temporary replacements unfairly strengthened E's bargaining position; no meaningful bargaining over wages was possible so long as E used reinstatement of strikers as bargaining bait to force acceptance of its terms)

6033-7056-3300 Intentional refusal to bargain

Harding Glass Industries **248 NLRB No. 091**

(withdrawal by E of one of its facilities from multi-E bargaining violative even if impasse)

6033-7056-6700 Proposal as to which party is willing to bargain

Patrick

6033-7070 Resumption of bargaining required

6033-7070-5000 Changed circumstances

Vitco Steel Supply Corp. **JD-103-80**

(E held to have unlawfully refused to bargain, notwithstanding parties had reached impasse, since circumstances changed after impasse when E not only withdrew its proposals in response to U's filing charges with Bd but also refused to meet with U thereafter)

6033-7084 Unilateral action may be justified by impasse

Newspaper Printing Corporation **250 NLRB No. 132**

(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

Dial Tuxedos, Inc. **250 NLRB No. 064**

(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

KCW Furniture Company, Inc. **247 NLRB No. 079**

(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

6033-8400 Failure to sign or reduce agreement to writing

Petroleum Contractors, Inc. **250 NLRB No. 094**

(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**

(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

Kennebec Beverage Co., Inc. **248 NLRB No. 176**

(E's failure to sign bargaining agreement previously agreed upon, violative, notwithstanding document prepared by U and forwarded to E did not contain provision for payment of helpers to which parties had agreed, where E insisted it would not execute document until it attorney approved, and since that time had neither informed U that document varied from agreement reached nor attempted to assist in reducing such agreement to writing; mere fact that addition to document was required did not relieve E of obligation to execute agreed-upon contract)

World Evangelism, Inc. **248 NLRB No. 117**

(successor E's failure to execute contract where it had agreed to adopt and sign predecessor's contract, unlawful)

Sidney M. B[illegible] Apartments **248 NLRB No. 088**

(E's refusing to incorporate certain terms in written document, not violative in view of insufficient evidence to support U's contention that E's sole negotiator communicated to U representative that agreement on those terms had been reached)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

(E's refusal to execute proposed contract not violative since, although U and E had orally agreed upon many of terms to be included in the proposed contract, at no time had all of substantive terms been agreed upon)

Tasman Sea, Inc. **247 NLRB No. 007**

(successor E's failure to execute bargaining agreement, unlawful, where it had contract in its possession several months, was aware of specific provisions, and willingly accepted contract w/o modification upon receiving letter from U contract would not be effective until 6 months after close of escrow)

Andersen Sand

Malibu Grand Prix Corp. **JD-(SF)-90-80**

(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Petricca Construction Company **JD-179-80**

(E's refusal to execute written contract as requested by U, not violative, notwithstanding that E had paid its unit Ees new increased wage rate and fringe benefits contained in the new contract, where there was no evidence that E ever agreed, either orally or in writing, that it would sign new contract or that it considered itself bound by it)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**

6033-8400—Cont.

(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from goup bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

6033-8401 Generally

Enidine, Inc. **251 NLRB No. 168**
(violative, especially where refusal occurred during certification year absent unusual circumstances)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

McKinzie Enterprises, Inc. d/b/a Cherokee United Super and Westpark United Super **250 NLRB No. 014**
(E's refusal to sign contract, not unlawful where there was no *meeting of the minds* about inclusion of certain contractual provisions and thus no contract)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(two inadvertent errors in written agreement submitted by U to E did not excuse E's complete refusal to execute agreement previously reached by U and E)

Shulman Air Freight, Inc. **JD-(SF)-39-80**
(E's refusal to sign contract containing terms which were agreed upon between E and certified U after exchange of letters, six negotiating meetings, and Ees' acceptance of E's final offer, violative)

Somerville Hospital **JD-102-80**
(E's refusal to execute agreement, not unlawful, where parties had not reached agreement on salary provisions due to mutual mistake notwithstanding Ees had ratified agreement and new salary provisions had been implemented by E)

6033-8450 Continuing request

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(E's rejection of U's request that E's last proposal, accepted by U, be reduced to writing, unlawful, notwithstanding fact that E had withdrawn proposal since proposal was withdrawn solely because of E's unlawful withdrawal of recognition and contract thus remained open)

National Steel Service Center, Inc. **JD-395-80**
(E obligated to sign bargaining agreement, notwithstanding impasse on change in scope of unit, since impasse on permissive bargaining subject had effect of removing from E freedom to agree to any but historical unit; U's call for meetings reasonably constituted request impassing statutory obligation to sign; further, E's continued insistence on separate units rendered explicit request to sign futile and terms agreed upon implemented which further show then was complete agreement on terms for renewal)

6033-9200 Ratification by Employees

Shulman Air Freight, Inc. **JD-(SF)-39-80**
(E's refusal to sign contract containing terms which were agreed upon between E and certified U after exchange of letters, six negotiating meetings, and Ees' acceptance of E's final offer, violative)

6050 SUBJECT MATTER OF BARGAINING

6050-0100 Generally

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impasse upon bargaining at a restaurant while aware of U's policy against discussing business at lunch and rejecting U's five proposals of alternative meeting places held to unlawful stifle negotiations at inception over threshold issue)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

6050-0120 Mandatory subjects defined

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(in-plant food prices and services held mandatory subjects of bargaining where E retained right to review and approves food prices and services provided by third-party supplier and in view of industrial practice to include such contract provisions)

Charmer Industries, Inc. **250 NLRB No. 031**
(notwithstanding contention that bill collection procedures are entrepreneurial credit policy decisions, ALJ held salesmens' collection of payments for merchandise sold and their responsibility for releasing orders for delivery were duties w/i term *working conditions* which are mandatory subjects of bargaining)

Tenneco Chemicals, Inc. **249 NLRB No. 171**
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(duty to bargain about wages, hours and other terms and conditions of employment includes duty to bargain about subcontracting out unit work)

Arizona Public Service Company **247 NLRB No. 054**
(subcontracting of unit work)

Lever Brothers Company **JD-301-80**
(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

Mission Childcare Consortium, Inc. **JD-(SF)-110-80**
(company provided meals)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(contributions to health and welfare and pension funds, mandatory subject of bargaining)

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E's decision to alter its marketing structure from branch office responsibility to new marketing hierarchy not mandatory subject of bargaining, since decision involved sale of significant assets, fundamental changes in marketing structure and significant reallocation of capital notwithstanding changes may have profound effect on employment conditions)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

530-EMPLOYER OBLIGATION TO BARGAIN

6050-0140 Permissible subjects defined

National Steel Service Center, Inc. **JD-395-80**
(appropriate unit permissive subject of bargaining)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impasse upon bargaining at a restaurant while aware of U's policy against discussing business at lunch and rejecting U's five proposals of alternative meeting places held to unlawful stifle negotiations at inception over threshold issue)

The Leavenworth Times, A Division of Thomson Newspapers, Inc. **JD-(SF)-308-79**
(U's proposal to settle part of ULP charge against E w/i collective-bargaining agreement, held permissive and not mandatory)

6050-0800 Scope and work of unit

6050-0825 Work preservation (see also 530-6067-4022)

6050-0825-3300 Economically motivated managerial decisions which have destructive effect on unit (See also 530-6067-4011 and 4022)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

6050-0850 Work functions

Newspaper Printing Corporation **250 NLRB No. 132**
(unilateral removal of advertisement typesetting work from *composing room* to *job shop*, violative, since this work was customarily performed by *composing room* Ees)

Newspaper Printing Corporation **250 NLRB No. 132**
(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

6050-0875 Compostion of unit

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

National Steel Service Center, Inc. **JD-395-80**
(appropriate unit not mandatory, subject of bargaining)

6050-1600 Remuneration and benefits

6050-1601 Generally

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to negotiate over pay of group leaders who comprise part of bargaining unit)

6050-1612 Wages

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-1612-5800 Indirect wages

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6050-1662 Pensions and group insurance

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-2500 Tenure and Seniority

6050-2528 Seniority

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-2575 Layoffs and/or terminations

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

6050-2579 Reinstatement rights of economic strikers

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(economic strikers entitled to reinstatement where U in informing E that its members would return to work adverted repeatedly to its insistence that E's offer had been accepted, pickets were removed and there was no evidence of further strike action)

6050-3300 Working conditions

6050-3340 Work schedules

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held violative of Section 8(a)(5) of Act, since it was clearly unilateral change in terms or condition of employment previously fixed by E and made at time when E was obliged to deal with U notwithstanding initiation of and withdrawal of clean up time done w/o any knowledge of management other than their immediate low level supervisors)

6050-3370 Vending machines and cafeteria services

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(E's refusal to bargain about in-plant food prices and services, violative, since prices are condition of employment w/i meaning of Sec. 8(d) where E retained right to review and approve prices and services provided by third-party supplier)

6050-3395 Disciplinary system

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(E's counseling policy mandatory subject of bargaining where Ee's refusal to submit to it became part of his personnel file and could affect his job security)

6050-4100 Grievance and dispute resolving procedures

6050-4133 Grievances

6050-4133-1200 Arbitration as final step of grievance procedure

Independent Stave Company **248 NLRB No. 025**
(E's failure to comply with arbitrator selection clause of current agreement with U held violative; E's position, attempting to spread arbitration work equally among five chosen arbitrators, blocked the arbitration provision entirely, and was mid-term modification of agreement w/o consulting with U)

6050-5000 Union-security and checkoff

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

6050-5075 Checkoff

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to agree to checkoff provision in order to *protect* interests of *pro-company* Ees)

Independent Stave Company **248 NLRB No. 025**
(E's refusal to remit checked-off dues to U held violative, since E failed to comply with checkoff provision in current contract; provision in E's authorization ptn that check-off dues be placed in escrow rather than be paid over to U deprived U of dues which Ees were obligated to pay)

6050-5800 Management prerogatives

6050-5875 Management rights clause

Lever Brothers Company JD-301-80
(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

6050-7000 Matters relating to nonunit employees

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6050-9100 Contract enforcement provisions

Independent Stave Company 248 NLRB No. 025
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

6067 ACTS CONSTITUTING REFUSAL TO BARGAIN OR INDICATING BAD FAITH

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. 615 F.2d 1289 (C.A. 10, 1980)
(failure to bargain not unlawful where (1) there was no contract between E and U by implication, (2) parties were equally at fault in contributing to ambiguity of their arrangement, and (3) there was no basis for finding of equitable estoppel absent evidence of (a) U's inability to obtain information as to status of E's membership in multi-E association and (b) U's detrimental reliance on E's conduct suggesting such membership)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. 615 F.2d 1289 (C.A. 10, 1980)
(failure to bargain not unlawful where (1) there was no contract between E and U by implication, (2) parties were equally at fault in contributing to ambiguity of their arrangement, and (3) there was no basis for finding of equitable estoppel absent evidence of (a) U's inability to obtain information as to status of E's membership in multi-E association and (b) U's detrimental reliance on E's conduct suggesting such membership)

6067-0100 Generally

United States Steel Corporation 248 NLRB No. 090
(violation where E refused to bargain concerning wages and working conditions of students attending E-sponsored school on basis that they were no longer unit members where Bd found that they remained in unit as Ees while in school)

6067-0150 Good faith is question of fact for Board to determine

6067-0150-3300 Can only be inferred from circumstantial evidence

Times-Herald, Inc. 249 NLRB No. 004
(*off the record* statements may be considered)

6067-0150-8300 Union animus not prerequisite to finding of lack of good faith

Production Plated Plastics, Inc. 247 NLRB No. 076
(in finding independent 8(a)(5) violation, Bd did not rely on part of Judge's decision that found U animus prerequisite for 8(a)(3) violation in circumstances constituting unilateral change)

6067-1000 Bargaining with objective of causing a work stoppage

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) JD-808-79

6067-2000 Actions taken to avoid reaching agreement

6067-2010 Response to bargaining request

Howard Johnson Company 250 NLRB No. 161
(E's refusal to acknowledge U's admitted requests to bargain, unlawful, where E knew that U was certified representative, and yet it ignored U's letters requesting bargaining; if E were acting in good faith, it would have acknowledged U's letters and advised it of its reasons for refusing to bargain, and after indirectly receiving notice of Bd's denial of requests for review of RD's D/O, E had option of complying with RD's decision or questioning Bd as to validity of notice it had indirectly received, but it failed to do either)

Suburban Ford, Inc. 248 NLRB No. 051
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

B. N. Beard Company 248 NLRB No. 016
(refusal to recognize Us, unlawful, where E refused to accede to requests for bargaining made by Us regarding new contracts)

Bristol Spring Manufacturing Company 247 NLRB No. 034
(E's refusal to bargain with certified U, unlawful where RD's overruling of E's objections to election again upheld on remand for hearing on such objections)

Hart Ski Mfg. Co., Inc. JD-11-80
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

6067-2020 Surface bargaining

Westvaco Corporation d/b/a Westvaco Gauley Woodyard 249 NLRB No. 012
(violation found where pattern of negotiations consisted of E parrying U's substantive proposals with insignificant unrelated concessions and E failed to reach agreement on any substantive subjects of bargaining)

Carbonex Coal Company 248 NLRB No. 107
(E's proposal of management rights clause requiring U to waive practically all its rights, refusing to negotiate U-security clause, refusing to negotiate over safety and health proposals constitute surface bargaining)

Maywood Do-Nut Co., Inc. 248 NLRB No. 080

Southside Electric Cooperative, Inc. 247 NLRB No. 107
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

Raines Lincoln-Mercury, Inc. JD-224-80

Southside Electric Cooperative, Inc. JD-800-79

6067-2025 Piecemeal bargaining

Digital Paging Systems of Toledo, Inc. 248 NLRB No. 015

Patrick

6067-2030 Dilatory and evasive tactics

Cable Vision, Inc. 249 NLRB No. 062

6067-2030-0100 Generally

Harowe Servo Controls, Inc. 250 NLRB No. 120
(unjustifiable, frequent, inordinately late arrival at bargaining sessions)

6067-2030-1200 Failure to reply, or delay in replying to request to bargain

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047

Industrial Uniform and Towel Service, Inc. JD-(NY)-43-80
(intentional delay of a month in negotiations, violative)

6067-2030-1700 Failure to designate bargaining representative

Maywood Do-Nut Co., Inc. 248 NLRB No. 080
(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

6067-2030-2500 Change in position

Harowe Servo Controls, Inc. 250 NLRB No. 120
(offering less favorable proposals than previously offered on *take it or leave it basis*)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) JD-808-79
(violation, where E, without explanation, reinstated previously withdrawn proposals)

6067-2030-5000 Behavior in negotiations

Harowe Servo Controls, Inc. 250 NLRB No. 120
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

Hospitality Motor Inn, Inc. 249 NLRB No. 145
(violation, where E had fixed intent not to reach agreement respecting U security and checkoff, demanded, in effect, as condition to contract, retention for itself right of unilateral modification of working conditions, and in addition, proposed management rights clause where E retained all rights not otherwise specifically covered by agreement, and refused to consider no discrimination provision)

Maywood Do-Nut Co., Inc. 248 NLRB No. 080

6067-2030-5000—Cont.

(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

Patrick

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(E's deviation from past practice by refusing to rescind notice to U terminating existing contract on its expiration date, unlawful)

Raines Lincoln-Mercury, Inc. **JD-224-80**
(failure to present complete contract proposal when promised, unlawful)

6067-2030-6700 Failure to make agreed-upon changes to contract

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(failure to revise proposed management-rights clause in accordance with interpretation E gave U)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

6067-2030-7500 Failure to make or keep bargaining conference appointments

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unjustifiable, frequent, inordinately late arrival at bargaining sessions)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(E's refusal to meet or arrange for future bargaining sessions after voluntarily recognizing U and agreeing to meet constituted unlawful withdrawal of recognition and refusal to bargain)

Clyde W. Dent Carpet Installation, Inc. **JD-389-80**
(E held to have refused to bargain in good faith where E, on several occasions, failed to meet with U at previously scheduled times; from the outset of bargaining, E's negotiator expressly voiced his belief that bargaining was futile and E went through the motions of negotiations without any serious intent to adjust differences and reach acceptable common ground)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(E's failure to attend meeting arranged by F.M.C.S., not unlawful in view of wording of Section 203(c) that either party's failure to agree to procedure suggested by F.M.C.S. not to be deemed violation of duty imposed by the Act)

6067-2030-8100 Failure to 'meet at reasonable times'

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to meet because supposedly at impasse and because of picket line misconduct shows evidence of E's bad faith)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E stalled negotiations by stalling scheduling of bargaining sessions)

Cable Vision, Inc. **249 NLRB No. 062**

The Baughman Company **248 NLRB No. 186**
(failure to respond to telephone calls except for one return call and failure to meet with U, unlawful)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

Wellman Industries, Inc. **248 NLRB No. 029**

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(long delay in commencement of bargaining for new agreement, unlawful where E had received U's proposals for new meeting and request for meeting but refused to meet until day before old agreement expired)

Raines Lincoln-Mercury, Inc. **JD-224-80**
(failure to meet at reasonable times for reasonable periods of duration, unlawful)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impasse upon bargaining at a restaurant while aware of U's policy against bargaining in restaurants and rejecting U's five reasonable alternatives held unlawful refusal to meet at reasonable times and places so as to delay and prevent bargaining)

Lucy's, Inc. **JD-832-79**
(E's delay in meeting with U for period of over 4 months, unlawful, notwithstanding U did not provide E with certain information concerning U's health and welfare fund, where U repeatedly attempted to persuade E to return to bargaining table during this period; U's failure to provide E with requested information did not relieve E from its obligation to meet with U at reasonable times)

6067-2040 Bypassing or otherwise undermining representative

Mather Federal Credit Union **JD-(SF)-8-80**
(bargaining with U while at same time attempting to destroy U's majority and undermine its representative status by using delay in coming to agreement and putting pressure upon Ees, unlawful)

6067-2040-2000 Bargaining with other groups of representatives

6067-2040-2033 Employer initiated

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

6067-2040-4000 Bargaining With Individuals or Offers Thereof

Ledford Construction Company, Inc. **251 NLRB No. 193**
(bargaining directly with Ees at meeting with Ees w/o U representative present)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(bargaining with Ees over piece work rates at time when collective-bargaining agreement in effect violative)

Top Manufacturing Company, Inc. **249 NLRB No. 055**
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

B. N. Beard Company **248 NLRB No. 016**
(bargaining directly with individual Ees by offering them terms and conditions of employment differing substantially from those set forth in U contract, unlawful)

Kaiser-Permanente Medical Care Program **248 NLRB No. 024**
(although contract provides exception to overtime rates where Ee requests particular work schedule, direct solicitation of Ees concerning waivers of right to overtime pay in order to institute new departmentwide schedule, violative, since E bypassed U in dealing directly with Ees on terms of employment)

The Saloon, Inc. **247 NLRB No. 156**
(E's conduct in touting its medical/dental program to Ees directly, as alternative to U health and welfare coverages, unlawful)

Raines Lincoln-Mercury, Inc. **JD-224-80**
(promising Ees improved benefits directly on conditions that they get rid of U, unlawful)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(concerning mandatory subjects of collective bargaining)

6067-2040-4500 Refusal to release employee committee members for bargaining

N.L.R.B. v. Indiana and Michigan Electric Company **599 F.2d 185 (C.A. 7, 1979)**
(E's refusal to grant Ee, who was bargaining representative for units other than his own and attended negotiations in other units, time off to attend bargaining sessions during work time, or to schedule sessions during off-duty time, unlawful, since it effectively denied Ees representation by Ee; E may not refuse to bargain with U bargaining committee or committees simply because U is coordinating various bargaining efforts and E fears U may use coordination to force it into company wide negotiations)

6067-2040-8000 Undermining authority of representative

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(violation where, subsequent to notification by U of its intent to negotiate new bargaining agreement, E's president directed preparation in its office of letters rejecting U which were presented to unit Ees for their signatures by E's general manager)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**

6067-2040-8000—Cont.

(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Lucy's, Inc. **JD-832-79**
(E's distributions of letters to Ees which it had received from U concerning progress of negotiations and U's position concerning same with attached letters from E which attached letters from E which attacked authority of U's negotiating team, unlawful, where distributions were intended to create division between Ees and U)

6067-2040-8075 Denying bargaining representative access to employer's premises

Yet Wah Restaurant **251 NLRB No. 010**
(E's refusal to allow U access to its premises to administer valid contract still in effect which included proviso allowing U access for this purpose, unlawful)

Campo Slacks, Inc. and J

6067-2050 Commission of ULP

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand requiring Bd to admit newly discovered evidence pertaining to post-hearing agreements reached by parties covering separate units of maintenance and janitorial Ees, Bd affirmed ALJ's conclusion that, while E asserted in good faith its economic proposals when dealing with U over janitors, such motivation did not legitimatize its conduct in bargaining over maintenance Ees since, during such bargaining E was committing serious ULPs which directly impeded and adversely affected bargaining)

6067-2050-1000 Assisting favored union

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(support for, recognition of, and dealing with asssited U while undermining organizing campaign of rival U, unlawful)

6067-2050-1400 Antiunion campaign or actions precluding fair election

Century Moving

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(refusal to bargain with U with card majority requesting recognition and bargaining followed by pattern of ULP's precluding fair election, unlawful)

Olympic Medical Corporation **250 NLRB No. 011**
(violation where E refused to recognize and bargain with U as majority representative of Ees while coterminously refusing to grant scheduled periodic wage increases to Ees and instituting retroactive change in policies)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(violation, where after request by U which enjoyed majority status E refused to recognize and bargain with such U and commenced to engage in serious ULPs violative of 8(a)(1) and (3))

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

Alumbaugh Coal Corporation **247 NLRB No. 112**
(refusal to recognize U with majority status followed by numerous ULPs, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(refusal to bargain with U that had majority while coterminously engaging in ULPs, unlawful)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(widespread and extensive campaign which included coercive speeches, threats, interrogations and other coercive conduct, promises and grants of benefits, solicitations of grievances, disciplinary harassment, and warnings and discharges for Ee's U activities)

6067-2050-3500 Bargaining directly with employees

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-86-80**
(by soliciting Ees to enter into individual employment contracts)

6067-2050-4200 Discrimination or threat thereof

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**

American Pistachio Corporation **249 NLRB No. 174**
(discharge of two leading U activists in unit of five Ees on same day E received bargaining demand, in addition to unlawful interrogation, unlawful)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

6067-2050-4900 Statements

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(withdrawal of recognition, after E had threatened striking Ees with statements that replacements would be hired and that these replacements' seniority would be superior to that of returning strikers, unlawful, where Ees felt continued concern about potential loss of employment)

Lucy's, Inc. **JD-832-79**
(store manager's statements to Ees that they should abandon U and form or join another U, unlawful, where made in context of U's efforts to negotiate new contract as well as in context of E's other ULP's)

6067-2050-5600 Interrogation

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

6067-2050-7000 Lockout or threat thereof

Harding Glass Industries **248 NLRB No. 091**
(refusal to reinstate ULP strikers after they requested reinstatement constitutes lockout)

6067-2060 Proposals and demands

6067-2060-1800 Less favorable proposals than previously offered

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(offering less favorable proposals than previously offered on *take it or leave it basis*)

6067-2060-2700 Initial and final proposals essentially the same

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

6067-2060-3300 Insistence on illegal or unreasonable provisions

6067-2060-3367 Withdrawal of ULP charges

Carbonex Coal Company **248 NLRB No. 107**

Patrick

6067-2060-4900 Contract to expire within certification year

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

6067-2060-6100 Rejection of proposal by union

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(failure to cast out U's proposal before rejecting it)

6067-2060-6600 Illegal or unreasonable demands

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E's seeking to impose contractual limitations on number of stewards available for handling grievances not bad faith bargaining where E was willing to pay stewards for time lost and U was making demands for authority, seniority and mobility of stewards)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(insisting that *pro-company* Ees be permitted to participate in selection of U stewards)

Cable Vision, Inc. **249 NLRB No. 062**

Tasman Sea, Inc. **247 NLRB No. 007**
(E's refusal to enter into bargaining agreement absent U's written guarantee that E be permitted to deviate from contract by making health and welfare payments on behalf of only portion of unit Ees, unlawful, since such insistence has effect of causing U to breach its statutory obligation to fairly represent all unit Ees; neither U's previous acquiesance nor reluntant agreement absolves E from bargaining obligation)

Tasman Sea, Inc. **247 NLRB No. 007**
(E requiring as condition precedent to entering into bargaining agreement that U not seek to enforce U security clause, unlawful)

6067-2060-7700 Right of unilateral modification reserved by employer

Hospitality Motor Inn, Inc. **249 NLRB No. 145**

6067-2060-7700—Cont.

(E's demanding management rights clause which would in effect retain for itself sole right to transfer, suspend, or discharge Ees for any reason, to make and enforce rules, to determine prices and services sold and furnished to Ees, to determine volume and rate of production, to redetermine number and location of operations and to discontinue operations, to subcontract work, to establish new job classifications and rates of pay; and further providing that E *retains all rights not otherwise specifically covered by this agreement*)

6067-2060-9400 Withdrawal of proposals

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E's bad faith shown by fact that after ULP strike ended and U's strength had disapated, E withdrew offers previously made and agreements previously reached demonstrating its earlier predictions that Ees would be better off without U)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

6067-2070 Imposing conditions

6067-2070-5000 As to procedure in bargaining sessions

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

6067-2070-6700 Conditions outside area of mandatory bargaining

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

6067-2070-6770 Appropriate unit

National Steel Service Center, Inc. **JD-395-80**
(E's insisting to impasse on change in scope of unit, unlawful, since scope of unit nonmandatory subject of bargaining)

6067-2080 Uncompromising attitude or refusal to make concessions

6067-2080-1200 Intransigence

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to negotiate over pay of group leaders who comprise part of bargaining unit)

Cable Vision, Inc. **249 NLRB No. 062**

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(rigid insistence, for purpose of precluding agreement on terms other than erosion of U's role as representative, on open shop provision, on grievance procedure with limited U role, and on merit wage increase system w/o U participation in its operation, unlawful)

6067-2080-3700 Wage increases and other unilateral changes in employment terms

Patrick

6067-2080-4300 Union-security provisions

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(E's contention that collection of U dues not E's responsibility, would constitute endorsement of U, and assertion of philosophical objections to checkoff does not satisfy statutory obligation to bargain, particularly where E did not ban solicitation for other causes; further, checkoff serves public good)

6067-2080-4400 No-discrimination provision

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(E's rejection of provision prohibiting racial or sexual discrimination, unlawful, notwithstanding E's contention unnecessary because law already prohibits discrimination and that it had not and did not intend to discriminate)

6067-2080-5600 Failure to make counter-proposals

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

6067-2080-6200 Insistence on unilateral power to act on matters within employment relationship

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(insisting that *pro-company* Ees be permitted to participate in selection of U stewards)

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(E's demanding management rights clause which would in effect retain for itself sole right to transfer, suspend, or discharge Ees for any reason, to make and enforce rules, to determine prices and services sold and furnished to Ees, to determine volume and rate of production, to redetermine number and location of operations and to discontinue operations, to subcontract work, to establish new job classifications and rates of pay; and further providing that E *retains all rights not otherwise specifically covered by this agreement*)

6067-2080-6900 Refusal to arbitrate grievances

6067-2080-6900 Refusal to arbitrate, grievance or interference with arbitration machinery

Independent Stave Company **248 NLRB No. 025**
(E's failure to comply with arbitrator selection clause of current agreement with U held violative; E's position, attempting to spread arbitration work equally among five chosen arbitrators, blocked the arbitration provision entirely, and was mid-term modification of agreement w/o consulting with U)

Alstate Coin Machine Co., Inc. **JD-(SF)-272-79**
(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

6067-2090 Totality of conduct

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(violation, where E had fixed intent not to reach agreement respecting U security and checkoff, demanded, in effect, as condition to contract, retention for itself right of unilateral modification of working conditions, and in addition, proposed management rights clause where E retained all rights not otherwise specifically covered by agreement, and refused to consider no discrimination provision)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(rigid insistence, for purpose of precluding agreement on terms other than erosion of U's role as representative, on open shop provision, on grievance procedure with limited U role, and on merit wage increase system w/o U participation in its operation, unlawful)

Clyde W. Dent Carpet Installation, Inc. **JD-389-80**
(E held to have refused to bargain in good faith where E, on several occasions, failed to meet with U at previously scheduled times; from the outset of bargaining, E's negotiator expressly voiced his belief that bargaining was futile and E went through the motions of negotiations without any serious intent to adjust differences and reach acceptable common ground)

H. H Fredericksen Co. **JD-(SF)-64-80**
(E's general course of conduct, considered in totality, did not reflect E's purpose to frustrate or forestall contractual consensus, as evidenced, among other considerations, by absence of *meeting of the minds* or of consensus with respect to specific contract terms, and by fact that E's draft proposals cannot be considered clear repudiation of some tentative consession previously reached, and that E's bargaining tactics, though clearly firm, reflected no persistent or pervasive rigidity)

6067-4000 Unilateral change in term or condition of employment

6067-4001 Generally

Charmer Industries, Inc. **250 NLRB No. 031**
(contention that unilateral change in procedures for collecting c.o.d. payments by having salesmen replace drivers, represented in another unit, in making collections was caused by circumstances beyond Es' control as a consequence of change bargained for in drivers' contract, rejected; execution of agreement with drivers' U did not fall w/i category of *external influence, outside agencies* or *external contingencies* which adversely affected interests and *environment* of salemen)

6067-4001-1700 What constitutes change

Saks

6067-4001-1750 Failure to abide by contract

The Nestle Company, Inc. **251 NLRB No. 142**
(violation where E failed to apply pension minimum retroactively, as negotiated, and unilaterally imposed changes in contractual pension plan w/o consent of U)

Newspaper Printing Corporation **250 NLRB No. 132**
(additional unilateral changes after impasse in existing terms and conditions of employment held violative)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in

6067-4001-1750—Cont.

instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**
(violation, where successor E, who had hired majority of unit Ees of predecessor, unilaterally changed conditions of employment in contract between U and predecessor E, since at time of hiring it did not indicate any intent to change conditions; E's contention it did not employ full Ee complement at time commenced operations rejected, in view of fact complement did not increase)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contribution to funds, it violated Act, notwithstanding cost to E remained same)

Independent Stave Company **248 NLRB No. 025**
(E's refusal to remit checked-off dues to U held violative, since E failed to comply with checkoff provision in current contract; provision in E's authorization ptn that check-off dues be placed in escrow rather than be paid over to U deprived U of dues which Ees were obligated to pay)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Newspaper Printing Corporation **JD-203-80**

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-86-80**
(failure to make payments to various U funds as required in agreements with U, violative)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(where two companies were found single E and their Ees were found appropriate unit, E's refusal to apply contract that U had with one company to other company held unilateral change of terms and conditions of employment and unlawful)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**
(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding asserted good faith doubt of majority U status, where E did not notify U of intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

6067-4001-2500 Changes greater than offered union

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unilateral increase of wage rates of unit Ees in excess of amount offered by E in final proposal)

6067-4001-3300 Effect of announcement or offer of change

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(announcing to Ees that it was implementing new wage program prior to breakdown of negotiations, violative)

6067-4001-4600 Adequacy of bargaining

Newspaper Printing Corporation **JD-203-80**

6067-4001-5000 Favorable to employees

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that E's treatment of new non-U Ees hired to replace strikers who had refused its offer of reinstatement did not indicate bad faith bargaining, where E applied to them wage provisions of existing contract; E's failure to reduce new Ees' wages, while having U agree to reduction in wages because of E's precarious financial condition, was not an unreasonable business decision and did not adversely reflect upon E's good faith in dealing with U since exclusion of new Ees from contracts fringe benefits gave strikers higher combined compensation rate)

6067-4001-6700 Unfavorable to employees

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6067-4001-8500 Changes before impasse

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where E made proposal during bargaining session, U official expressed doubt that members would accept but took provision to members for vote and E implemented change w/o waiting for results, E violated Act as no impasse existed)

6067-4001-8700 Changes after impasse

Newspaper Printing Corporation **250 NLRB No. 132**
(additional unilateral changes after impasse in existing terms and conditions of employment held violative)

Newspaper Printing Corporation **250 NLRB No. 132**
(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally implemented its contract proposals when there was no impasse)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

6067-4001-9100 Changes after expiration of contract

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Peerless Roofing Co., Ltd. **247 NLRB No. 072**
(refusal to pay contributions on behalf of Ees into U's pension, welfare, and similar trust funds upon expiration of contract, violative where cessation of such payments was not reasonably encompassed in E's offers during collec-

tive bargaining, and U did not waive right to bargain issue; such plans constitute aspect of Ee wages and term and condition of employment which survives expiration of contract and cannot be altered w/o bargaining)

6067-4001-9500 **During pendency of postelection objections**

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(unilateral granting of raises and changes of Ee status done while validity of decertification election in doubt, violative)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

6067-4011 Failure to bargain before making economically motivated operating decision which has effect on unit

6067-4011-0100 **Generally**

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

6067-4011-0167 Destructive effect on unit

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

6067-4011-1100 **Subcontracting unit work**

Carbonex Coal Company **248 NLRB No. 107**
(E's subcontracting of 100 percent of its hauling operation which resulted in layoff of 2 Ees, violative)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractees w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

6067-4011-2200 **Change to reliance on independent contractors or franchisors**

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

6067-4011-3300 **Leasing or selling portion of operation**

C

6067-4011-4200 **Spinoff or transfer of operations**

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E's decision to alter its marketing structure from branch office responsibility to new marketing hierarchy not mandatory subject of bargaining, since decision involved sale of significant assets, fundamental changes in marketing structure and significant reallocation of capital notwithstanding changes may have profound effect on employment conditions)

6067-4011-4400 **Partial termination of operation**

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(initial presumption exists that economically motivated partial closing is mandatory subject of bargaining; however, balancing test must be applied in each case to determine whether duty to bargain over decision to close exits and here though E's decision to close based on valid economic reasons, there were no compelling reasons which would have prohibited E from bargaining and its refusal violative, especially where closing not based on sudden or unanticipated situation requiring immediate action)

Tri-State Warehouse

6067-4011-4600 **Transferring work**

Universal Security Instruments, Inc. **250 NLRB No. 092**
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractees w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

6067-4011-4800 **Elimination of jobs**

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral elimination of one department's third shift)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral elimination of jobs, unlawful)

6067-4011-5500 **Termination of operations**

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractees w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

U.S. Pipe

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E held to have had duty to bargain over decision to close one of its two plants, where bargaining would have vindicated U's interest, it would not have hampered E's decision to close in any way, and customer withdrawals of orders did not excuse failure to involve U in decision to close plant)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E violated duty to bargain where E presented U with fait accompli and prevented U from participation in closing because of delay in informing U of decision to do so, and E would not give U a time table or ask for suggestions)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(proper moment of time at which E's motive is assessed is at time alleged ULP with respect to closing of plant is committed; effect of person's action normally is measured by looking at circumstances surrounding action at time it occurred, which includes careful scrutiny of manner in which E implements its decision to close)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(SCt's emphasis on purpose and effect means inquiry may not stop with basis for valid economic decision to close plant but must also consider manner of its implementation which may constitute ULP, and valid economic decision may not shield E where it has additional motive, as shown by timing, of chilling unionism)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's implementation and closing of one of its two plants, unlawful, where it was partial closing timed to chill unionism in remaining plant; E's purpose

6067-4011-5500—Cont.

was to affect U election at remaining plant and E knew reasonably probable effect of the closing; and E precipitated customer withdrawal of orders and hastened the closing sooner than was economically justified, and it may not now profit from its own conduct by claiming withdrawals required a fast closing)

6067-4011-6900 **Change in manner of operation**

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(failure of innkeeper operating motel and restaurant to bargain over conversion of restaurant to cafeteria, unlawful where situation was not so immediate and severe that bargaining would have been fruitless, there was no showing that bargaining would have substantially impaired efforts to negotiate with third party, and E made no substantial capital expenditures)

6067-4011-7700 **Relocation of operations**

Vitco Steel Supply Corp. **JD-103-80**

6067-4022 Failure to bargain over effect on unit of economically motivated operational decisions

6067-4022-0100 **Generally**

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

6067-4022-1100 **Subcontracting unit work**

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

Arizona Public Service Company **247 NLRB No. 054**
(E's refusal to bargain over clause to replace subcontracting restrictions in contract after restrictions had been declared invalid under 8(e), unlawful, notwithstanding alleged *zipper* and *management rights* clauses relied on by E, where E was obliged to meet and negotiate on U's proposals after U made timely request to negotiate concerning subcontracting, but E refused to entertain any proposals calculated to restrict subcontracting of unit work)

6067-4022-4400 **Partial termination of operation**

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E failed to bargain in good faith over effect of closing of one of its two plants where E told U E's proposal on severance pay was not bargainable, U understood E's proposal that it had bargained in good faith to be attempt to force U to abandon its ULP charges, and E's contentions are not responsive to scope of ct's review since determination of credibility issues raised by E are for Bd)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's implementation and closing of one of its two plants, unlawful, where it was partial closing timed to chill unionism in remaining plant; E's purpose was to affect U election at remaining plant and E knew reasonably probable effect of the closing; and E precipitated customer withdrawal of orders and hastened the closing sooner than was economically justified, and it may not now profit from its own conduct by claiming withdrawals required a fast closing)

6067-4022-4800 **Transfer of work**

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6067-4022-5500 **Termination of operations**

Ferro Mechanical Corp. **249 NLRB No. 083**

ABC Trans-National Transport, Inc. **247 NLRB No. 025**
(where E made economically based decision to cease operations and did not notify U until decision made, it violated Act because U was denied opportunity to bargain during critical time where such bargaining could have been productive)

American Boiler

6067-4022-7700 **Relocation of operations**

Vitco Steel Supply Corp. **JD-103-80**

6067-4033 Unilateral change in remuneration or benefits (See also 530-6050-1600)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilaterally promising Ees advancement and other benefits and improvements in order to discourage their U activities, unlawful)

6067-4033-1300 **Uniforms, etc.**

Standard Homes, Inc. **249 NLRB No. 146**
(violation where E refused to pay Ees returning from layoff status the safety shoe allowance to be paid *regular employees* under the contract, since parties' past practice had shown that *regular employees* included Ees on layoff and that on recall to work they were entitled to receive said allowance)

6067-4033-1500 **Use of company vehicles**

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(E unilaterally informing Ees for whom bargaining agreement established hourly wage rate that they could either work as subcontractors on piece rate basis or quit and that each crew would be responsible for providing its own truck which E had previously provided)

6067-4033-2500 **Wage**

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(granting wage increases to selected Ees w/o notice to U where general policy of withholding wage increases because of adverse conditions was in effect, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(announcing to Ees that it was implementing new wage program prior to breakdown of negotiations, violative)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(E unilaterally informing Ees for whom bargaining agreement established hourly wage rate that they could either work as subcontractors on piece rate basis or quit and that each crew would be responsible for providing its own truck which E had previously provided)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(unilateral replacement of cost-of-living increases with across-the-board wage increases, unlawful)

Hedison Manufacturing Company **249 NLRB No. 096**
(although granting of week's wages to Ees, 2 weeks before election, for time they were snowbound at E's plant because of great snowstorm was not violative of 8(a)(1), grant of such benefit w/o consultation with U held unlawful, since change in terms and conditions of employment, even for the better, is subject of bargaining)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(payment to Ees at higher wage rate than rate negotiated, unlawful)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contribution to funds, it violated Act, notwithstanding cost to E remained same)

P. A. Incorporated **248 NLRB No. 077**
(posting of notice announcing grant of unilateral wage increases, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral change by rehiring previously laid off Ees at higher rates, unlawful)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(violation by unilateral grant of wage increase by new E which was bound as alter ego of old corporation bearing contract with U)

Southside Electric Cooperative, Inc. **247 NLRB No. 107**

6067-4033-2500—Cont.

(E's unilateral recission of wage increases granted while ALJ's decision on ULP charges pending and after ct had issued injunction against unilateral actions by E, unlawful, notwithstanding E's contention withdrawal of increase resulted from U's objection and threat to refer matter to NLRB for possible contempt proceedings since U's objection was to E's failure to bargain regarding increases rather than to granting *per se*)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(unilateral wage increase unlawful, since it came after E was obligated to bargain)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(unilateral 50-cent, across-the-board raise w/o notice, unlawful)

Industrial Uniform and Towel Service, Inc. **JD-(NY)-43-80**
(grant of increase in minimum wage rates, violative)

Tri-State Warehouse

Raines Lincoln-Mercury, Inc. **JD-224-80**
(unilateral grant and then recission of wage increases, unlawful)

H. H Fredericksen Co. **JD-(SF)-64-80**
(unilateral granting, following impasse, of wage increases with retroactive date, not unlawful, notwithstanding that retroactive compensation had not been previously proffered to U during negotiations, and that E's condition precedent qualifying E's proposal on achievement of contract settlement was never satisfied; E's decision to grant retroactive wage increase did not disparage U's representative status nor constitute rejection of collective bargaining principles, and retroactive increases were reasonably comprehended w/i E's pre-impasse proposals)

H. H Fredericksen Co. **JD-(SF)-64-80**
(unilateral wage rate and fringe benefit changes, not unlawful, where genuine impasse developed sufficient to stall negotiations and privileged E's unilateral changes, and impasse was not subsequently dissipated when U submitted proposals which, however, did not reflect substantial concessions or change of position)

Mather Federal Credit Union **JD-(SF)-8-80**
(unilateral change in E's last wage offer, unlawful, notwithstanding E's contention that impasse ensued because of failure to agree on other issues, where E's efforts to defeat Ees' statutory rights were not reconcilable with requirements of good faith bargaining)

Lucy's, Inc. **JD-832-79**
(E's unilateral grant of wage increases and other economic benefits when there was no impasse in bargaining, unlawful)

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(successor E's unilateral changes in wages, unlawful, where majority of Ees in unit were Ees of predecessor E and E had duty to bargain with U before making any changes)

6067-4033-2700 Wage decrease

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(lowering piece work rates and new hire rates)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to maintain predecessor E's wage levels, unlawful where successor adopted predecessor's contract with U)

B. N. Beard Company **248 NLRB No. 016**
(E's unilateral reduction of wage rates provided for in existing contracts with Us, unlawful; E's contention that it had no obligation to pay strike replacements wages set forth in contracts, rejected)

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E's unilateral recission of wage increases granted while ALJ's decision on ULP charges pending and after ct had issued injunction against unilateral actions by E, unlawful, notwithstanding E's contention withdrawal of increase resulted from U's objection and threat to refer matter to NLRB for possible contempt proceedings since U's objection was to E's failure to bargain regarding increases rather than to granting *per se*)

Ernst Construction, Div. of Ernst Steel Corporation **JD-826-79**
(violation, where E reinstated laid-off Ees at unilaterally established lower rates of pay; E and U had implemented practice of compensating Ees at rates higher than that called for in contract, subsequently E acquiescened in the continuing practice which survived prior instance of layoff and recall of Ees, and E took no steps before or during negotiations of current contract to abrogate, restrict, or alter continuing practice)

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

6067-4033-2900 Travel expenses

General Telephone Company of Ohio **248 NLRB No. 010**
(E's revision of its general instructions regarding travel on company time while working on distant job site held unlawful unilateral change)

6067-4033-3100 Overtime pay schedules

The Baughman Company **248 NLRB No. 186**
(unilateral change in computation of overtime pay on basis of unilaterally lengthened workday and workweek, unlawful)

6067-4033-4400 Holiday pay

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

The Saloon, Inc. **247 NLRB No. 156**
(E's failure, upon expiration of contract with U, to treat Memorial Day as paid holiday which was prior practice, unlawful)

6067-4033-5000 Bonus

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(withholding Christmas bonus, violative)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

6067-4033-5900 Vacation pay

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral recission of vacation pay of Ees laid off previous summer and refusal to negotiate as to reimbursement of such pay, unlawful)

Saks

6067-4033-6300 Savings funds

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

6067-4033-6700 Merit wage increase

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

6067-4033-7100 Incentive wage plans

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Hedison Manufacturing Company **249 NLRB No. 096**

6067-4033-7500 Service, attendance and other awards

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral improvement in attendance awards, unlawful)

6067-4033-8600 Dues

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

6067-4033-8800 Free food, beverages

Mission Childcare Consortium, Inc. **JD-(SF)-110-8**

6067-4033-8800—Cont.

(discontinuing policy of furnishing free meals to Ees at child care center who ate with children, unlawful)

6067-4033-9100 Pensions and group benefits

The Nestle Company, Inc. **251 NLRB No. 142**
(violation where E failed to apply pension minimum retroactively, as negotiated, and unilaterally imposed changes in contractual pension plan w/o consent of U)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(unilateral failure to make health and welfare and pension fund contributions and institution of provision for separately funded *medical benefits* program with sick leave and vacation benefits, unlawful)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(unilateral increase in insurance benefits, unlawful)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter-ego E who required rehired Ees to sign agreement stating that all fringe benefits would be paid directly to them instead of U and to hold them responsible for transfer of monies to U violated Act)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to maintain predecessor E's benefit levels, unlawful where successor adopted predecessor's contract with U)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contribution to funds, it violated Act, notwithstanding cost to E remained same)

B. N. Beard Company **248 NLRB No. 016**
(E's unilateral discontinuance of payments to health and welfare funds of two Us, unlawful, even assuming one U owed E credit for overpayment to pension fund, where E, despite U's request for bargaining, did not negotiate with U with respect to cessation of payments)

Saks

The Saloon, Inc. **247 NLRB No. 156**
(E's conduct in unilaterally instituting its own medical/dental/life insurance program upon expiration of contract with U, as alternative to U health and welfare coverage, unlawful)

The Saloon, Inc. **247 NLRB No. 156**
(E's unilateral discontinuance of contributions to welfare and retirement funds upon expiration of contract with U, unlawful)

Peerless Roofing Co., Ltd. **247 NLRB No. 072**
(refusal to pay contributions on behalf of Ees into U's pension, welfare, and similar trust funds upon expiration of contract, violative where cessation of such payments was not reasonably encompassed in E's offers during collective bargaining, and U did not waive right to bargain issue; such plans constitute aspect of Ee wages and term and condition of employment which survives expiration of contract and cannot be altered w/o bargaining)

American Boiler

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-86-80**
(failure to make payments to various U funds as required in agreements with U, violative)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(violation where E unilaterally ceased making health and welfare and pension fund contributions which are mandatory subjects of bargaining)

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Michigan Drywall Corporation, M

6067-4033-9500 Insurance

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(allowing insurance policy to lapse and changing carriers w/o notifying or bargaining with U)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(unilateral failure to make health and welfare and pension fund contributions and institution of provision for separately funded *medical benefits* program with sick leave and vacation benefits, unlawful)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral increase in insurance benefits, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral change in insurance benefits of previously laid off Ees at time of rehiring)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(violation by institution of new insurance policy by new E which was bound as alter ego to contract of preexisting corporation)

6067-4033-9700 Safety

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral contribution to purchase of safety shoes, unlawful)

6067-4044 Unilateral change in tenure or seniority (See also 530-6050-2500)

6067-4044-4000 Discharge

Atlan Inc. **JD-890-79**
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

6067-4044-5000 Layoff

Tylertown Wood Products **251 NLRB No. 048**
(unilateral layoff of Ees, not unlawful, where due to unanticipated breakdown of plant machine, E could not inform U it anticipated laying off Ees; E laid off Ees incrementally and it could not be expected that E would inform U each time small number of Ees were laid off; parties discussed effects of layoffs on Ees throughout period of their occurrence; E bargained in good faith from beginning; and it informed newspaper of situation to dispel any rumors linking layoffs to U activity or election results)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral layoffs in two divisions, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral layoff, unlawful)

6067-4044-6700 Seniority

The Baughman Company **248 NLRB No. 186**
(unilateral elimination of seniority as basis for scheduling vacation, unlawful)

6067-4044-7500 Reinstatement rights of economic strikers

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(where U offered to accept E's last offer in order to obtain reinstatement of terminated economic strikers, E's refusal to discuss offer and status of strikers unlawful)

6067-4055 Unilateral change in working conditions (See also 530-6050-3300)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilaterally soliciting Ees to adjust their greivances for purpose of dissuading Ees from joining, assisting, or supporting U, unlawful)

6067-4055—Cont.

Saks

6067-4055-1000 Dress code

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

6067-4055-1500 Cleanup time

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held violative of Section 8(a)(5) of Act, since it was clearly unilateral change in terms or condition of employment previously fixed by E and made at time when E was obliged to deal with U notwithstanding initiation of and withdrawal of clean up time done w/o any knowledge of management other than their immediate low level supervisors)

6067-4055-2000 Production quota

Tenneco Chemicals, Inc. **249 NLRB No. 171**
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

6067-4055-2500 Use of rest rooms

Production Plated Plastics, Inc. **247 NLRB No. 076**
(institution in pro-U department of new restroom use policy requiring Ees to sign out in order to use restroom and providing disciplinary action if Ees signed out more than five times each week, violative, where Ees previously merely obtained permission from supervisors)

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rule forbidding leaving to go to restroom w/o permission)

6067-4055-2600 Use of bulletin boards

Hedison Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from posting U-related or U literature on E's bulletin boards, and threatening Ees with discipline for violating rule, unlawful)

6067-4055-3000 Hours worked

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(promulgation of regulation concerning flex-time, w/o consulting with U, unlawful, notwithstanding contention that action did not establish new work rules but merely reiterated existing rules, where prior thereto local autonomy was regularly exercised between Ee and supervisors regarding working hours, and freezing hours w/i certain time limits deprived Ees of right to make individual adjustments of hours with their supervisors)

The Baughman Company **248 NLRB No. 186**
(unilateral increase in length of workday and workweek, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral reduction in hours, unlawful)

6067-4055-3300 Break periods

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rule forbidding leaving to go to restroom w/o permission)

6067-4055-3500 Assignment of work

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

6067-4055-3700 Job classification

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(unilateral changes in classification and wage progressions, unlawful)

Atlanta Baking Company, Inc. **JD-288-80**
(unilateral elimination of supervisory job classification, unlawful)

6067-4055-3800 Transfer

Universal Security Instruments, Inc. **250 NLRB No. 092**
(E violated Act by making job transfer offers to its new plant to Ees w/o bargaining with U)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Carterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) 8250 NLRB 089
(violation where E unilaterally announced and implemented new policy restricting use of transfer pool system; Ees previously had been able to downgrade themselves to lesser-paid, less demanding job classifications)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilaterally formulating and implementing new terms and conditions for possible transfer to other departments of Ees selected for layoff, unlawful)

6067-4055-4000 Working rules or schedules

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where a week after U won election and before U's vitory was certified, E changed Ees' work hours and lunch period w/o consulting with U)

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rules prohibiting rotation of onerous and demanding tasks)

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

6067-4055-4200 Removing work from unit

Newspaper Printing Corporation **250 NLRB No. 132**
(unilateral removal of advertisement typesetting work from *composing room* to *job shop*, violative, since this work was customarily performed by *composing room* Ees)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Atlan Inc. **JD-890-79**
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

6067-4055-4300 Job requirements

Charmer Industries, Inc. **250 NLRB No. 031**
(Es' unilateral change in procedures for collecting payments from customers, whereby salesmen replaced delivery drivers in making c.o.d. collections, unlawful, since procedure resulted in substantial additional duties and burdens for salesmen and were not a matter of management prerogative; inadequacy of alternative methods to direct collection exposed salesmen to considerable pressures which forced them to begin collecting payments themselves and, although Es did not directly pressure salesmen to make collections, they knowingly utilized force of circumstances to control salesmens' conduct)

Tenneco Chemicals, Inc. **249 NLRB No. 171**
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

6067-4055-4500 Personal conversation

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smok-

6067-4055-4500—Cont.

ing and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rule prohibiting talking while working)

6067-4055-4600 Movement around workplace

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(E's reprimanding of attorney Ee for violating new work rule, herein found unlawful unilateral change, whereby attorneys were forbidden from being present in area where negotiations with Ees in another unit were in progress, unlawful)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(E's issuance of directive forbidding attorney Ees to be present in area during specified hours when negotiations were in progress with Ees in another unit, unlawful, where E failed to notify U representing attorney Ees of proposed change and failed to discuss it with U)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from visiting fellow Ees in other departments during lunch and break periods, and threatening Ees with discipline for violating rule, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral circumscription of Ee's representational function by imposition of restrictions as to his movement in the plant, unlawful)

6067-4055-5000 Rules governing absenteeism and tardiness

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(new requirement of doctor's slips for absences due to illness)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unilateral reduction in length of grace period for lateness and disciplining Ee because her late arrival was outside protection of more stringent grace period but w/i original grace period guideline, violative)

Wellman Industries, Inc. **248 NLRB No. 029**
(discharge for violating unilaterally and unlawfully imposed on-call rule, unlawful)

Lever Brothers Company **JD-301-80**
(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation by unilateral modification of Ee absence-counseling system which deprived Ee of opportunity to seek U representation in session which could result in discipline)

6067-4055-6000 Lunch period

Newspaper Printing Corporation **JD-203-80**
(violation where E unilaterally instituted rule forbidding previous practice of eating and drinking at work stations)

6067-4055-6300 Physical examinations

Talbert Manufacturing, Inc. **250 NLRB No. 026**

6067-4055-7000 Vending machines and cafeteria services

Henry Vogt Machine Company **251 NLRB No. 040**
(unilateral elimination of privilege of using subsidized cafeteria by laboratory Ees, unlawful; E announced its intention to alter status quo by barring Ees from cafeteria just 2 days before contract was presented to Ees for ratification)

6067-4055-7500 Privileges

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Newspaper Printing Corporation **JD-203-80**
(violation where E unilaterally instituted rule forbidding previous practice of eating and drinking at work stations)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6067-4055-8000 Telephones, radios, etc.

Hedison Manufacturing Company **249 NLRB No. 096**
(unilaterally prohibiting use of radios and pay telephones during working hours, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral circumscription of U representative by restricting his access to telephone, unlawful)

6067-4055-8500 Disciplinary system

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation by unilateral modification of Ee absence-counseling system which deprived Ee of opportunity to seek U representation in session which could result in discipline)

6067-4055-8900 Overtime

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral change from voluntary to mandatory overtime, unlawful)

Mahler Sales Co., Inc. **JD-(SF)-312-79**
(no violation found where E unilaterally changed Ees overtime policy at time when E had no obligation to bargain with U since U had lost election based on challenged ballot which was only later counted in favor of U)

6067-4055-9500 Imposition of fines or other financial liability

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(docking Ee for time he missed from work, not unlawful, since E has right to dock Ee for such reason, and evidence herein fell short of establishing that E was thereby unilaterally changing a generally applicable term or condition of employment)

6067-4066 Unilateral change in grievance and dispute resolving procedures (See also 530-6050- 4100)

Campo Slacks, Inc. and J

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's letter, 4 days after U certified, unambiguously ending application of grievance-arbitration procedures to unit Ees in accordance with procedures set forth in Ee handbook held violative, since E did not offer to, and in fact did not, bargain with U about excluding unit Ees from coverage of grievance-arbitration procedure)

Tri-State Warehouse

Newspaper Printing Corporation **JD-203-80**
(E's refusal to arbitrate or even submit to third step of grievance procedure involving whether E voluntarily quit or was discharged, unlawful; notwithstanding U might also have Section 301 remedy; nor was deferral to arbitration appropriate)

Newspaper Printing Corporation **JD-203-80**
(refusal to arbitrate not per se violation of Section 8(a)(5); however where refusal to arbitrate, like refusal to comply with any contract provision, evidences intention to violate entire contractual undertaking and is part and parcel of unlawful scheme to repudiate bargaining obligation then refusal to arbitrate unlawful; in such circumstances Bd will order remedy even though U might also have remedy under Section 301 of Act)

6067-4077 Unilateral change in union-security and checkoff (See also 530-6050-5000)

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(any failure by E-member of multi-E association, in unlawfully refusing to sign and abide by terms of contract negotiated between association and U, to deduct checkoff dues of Ees who had authorized such deduction, violative)

Peerless Roofing Co., Ltd. **247 NLRB No. 072**
(E's failure to deduct U dues and transmit dues to U, not unlawful where obligation for such payment was pursuant to U-security and dues-checkoff clauses which did not survive when contract expired)

6067-4500 Wage and/or employment data

Ledford Construction Company, Inc. **251 NLRB No. 193**
(where U requested details of E's complex wage proposal and E complied by providing U with its proposal containing formula to be used in calculating changes in wage rates and also provided example using hypothetical

6067-4500—Cont.

wage rates it did not violate Act notwithstanding it could not provide actual *dollars and cents,* figures as these were not available at that time)

6067-5000 Disciplinary action to enforce unilateral changes

Hedison Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from visiting fellow Ees in other departments during lunch and break periods, and threatening Ees with discipline for violating rule, unlawful)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from posting U-related or U literature on E's bulletin boards, and threatening Ees with discipline for violating rule, unlawful)

6067-6000 Duty to furnish information

6067-6001 Generally

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(U's bare assertion that it needs information to process a grievance does not automatically oblige E to supply all the information in the manner requested, since duty to supply information turns upon the circumstances of the particular case, and the same may be said for type of disclosure that will satisfy that duty)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

6067-6001-2000 Specificity and/or clarity

Ledford Construction Company, Inc. **251 NLRB No. 193**
(where U requested details of E's complex wage proposal and E complied by providing U with its proposal containing formula to be used in calculating changes in wage rates and also provided example using hypothetical wage rates it did not violate Act notwithstanding it could not provide actual *dollars and cents,* figures as these were not available at that time)

6067-6001-3700 Standard for furnishing is relevancy of information to union's role as bargaining agent

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6001-3720 Relevance to bargaining negotiations

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(refusal to furnish U with requested information concerning Ees' names, classifications, dates of hire, current wage rates, and dates and amounts of last pay increases, unlawful since information was necessary and relevant to negotiations)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(E's refusal to furnish U names and addresses of all unit Ees almost year after U's certification held violative, since they were necessary for U to perform its role as bargaining representative of E's Ees)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

Industrial Uniform and Towel Service, Inc. **JD-(NY)-43-80**

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6001-3740 Relevance to policing agreement

Pullman Building Company **251 NLRB No. 145**

Alenco, A Division of Redman Building Products, Inc. **251 NLRB No. 067**
(E's refusal to furnish U with requested wage information which involved matter of claimed unilateral reduction of pay rates of certain Ees, violative)

Campo Slacks, Inc. and J

Southwestern Bell Telephone Company **247 NLRB No. 027**
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Michigan Drywall Corporation, M

6067-6001-3750 Relevance to processing grievances

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E's refusal to supply U with copies of Ee's employment application and driving record where Ee was accused of falsifying his driving record on application violative as information necessary for U to adise Ee on whether he should file grievance and fact that Ee had not authorized such release in writing is immaterial)

Lucky Markets, Inc. **251 NLRB No. 118**
(E's refusal to furnish information sought by U pertaining to grievance arising from transfer of Ee pursuant to E's affirmative action program, unlawful, since U is entitled to statistical information (Ees' names, ages, race, sex, marital status) requested by U inasmuch as test for U's need for information concerning terms and conditions of employment is simply a showing of probability that desired information was relevant and would be of use to U in carrying out its statutory duty and responsibilities; however, E was not obligated to divulge statistical age data not applicable to Ee's age)

Campo Slacks, Inc. and J

Allied Paper, Inc., Division of SCM Corporation **JD-341-80**
(E's refusal to furnish U copy of timebook in order to establish whether grievant was probationary Ee where E had refused to process grievance because of Ee's alleged probationary status, not unlawful, where whether Ee worked on certain day determinative of question, U representative could testify what timebook showed, and testimony would be admissible upon E's failure to furnish timebook; further, Ee himself could testify as to his whereabouts on day in question)

6067-6001-3760 Wage and related information presumptively relevant

Living and Learning Centers, Inc. **251 NLRB No. 041**
(U is not required to demonstrate exact relevance of such information unless E has submitted evidence to rebut presumption)

Jaggars-Chiles-Stovall, Inc. **249 NLRB No. 108**
(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

6067-6001-3770 Names and addresses of unit employees presumptively relevant

Hecla Mining Company **248 NLRB No. 182**
(where furnishing list of unit Ees names places no unreasonable burden on E, refusal to furnish even w/o showing of need is violative)

6067-6001-3780 Relevancy of other data must be demonstrated

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6033 Form and circumstances in which information supplied

6067-6033-2500 Adequacy

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**
(refusal to provide U with photocopies of requested documents necessary to process five grievances violative where, although E would rather furnish the information by reading to note-takers or permitting U to hand-copy documents, photocopying procedure would have been much less costly to E and

6067-6033-2500—Cont.

U, and would have given U greater assurance of accuracy and completeness of information furnished)

6067-6033-8800 **Delay in furnishing information**

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unreasonable delay in furnishing information and documents requested by U in course of contract negotiations violative)

Aeolian Corporation, Ivers

6067-6050 Availability of Information Sought

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

6067-6058 Cost of Supplying Information

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(on ct remand, Bd reaffirmed its original decision that E did not violate Sec. 8(a)(5) when it conditioned its agreement to provide Us with certain company records upon Us' payment of costs incurred in supplying requested documents)

6067-6067 Nature of information to be supplied

6067-6067-2000 **Financial data substantiating claim of economic hardship**

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6067-2500 **Financial data to justify modification of contract**

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(piecework rates and how they were arrived at, moreover, belatedly supplying information does not fulfill bargaining obligation)

6067-6067-3300 **Documents in personnel file**

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E's refusal to supply U with copies of Ee's employment application and driving record where Ee was accused of falsifying his driving record on application violative as information necessary for U to adise Ee on whether he should file grievance and fact that Ee had not authorized such release in writing is immaterial)

6067-6067-3800 **Incentive program**

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047(I19(piecework rates and how they were arrived at, moreover, belatedly supplying information does not fulfill bargaining obligation)**

6067-6067-4000 **Production and sales data**

Aeolian Corporation, Ivers

6067-6067-4500 **Wage and/or employment data**

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(refusal to grant U's request to review E's payroll records, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(refusal to furnish U with requested information concerning Ees' names, classifications, dates of hire, current wage rates, and dates and amounts of last pay increases, unlawful since information was necessary and relevant to negotiations)

Jaggars-Chiles-Stovall, Inc. **249 NLRB No. 108**
(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(refusal to produce, at U's request, record of number of hours worked by unit Ees during stated contract year, violative where E defended its refusal on ground that U's bargaining contract had expired)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

The Workshop, Inc. **JD-230-80**
(refusal to supply names and addresses and hiring dates of Ees relevant to and necessary for negotiations, unlawful)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(E's refusal to furnish wage data concerning nonunit Ees, unlawful, where at date of hearing, E was first formally put on notice of ULP charge as to contract negotiation need for requested data, E did not agree at that time to furnish information, nor did it seek to postpone hearing or claim inadequate advance notice of this basis of charge, but instead E insisted it had been under no obligation to furnish data prior to hearing)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(E's refusal to furnish wage data concerning nonunit Ees, unlawful, where at date of hearing, E was first formally put on notice of ULP charge as to contract negotiation need for requested data, E did not agree at that time to furnish information, nor did it seek to postpone hearing or claim inadequate advance notice of this basis of charge, but instead E insisted it had been under no obligation to furnish data prior to hearing)

6067-6067-6000 **Specific individual wage and/or employment data**

Yet Wah Restaurant **251 NLRB No. 010**
(refusal to furnish U with requested names, dates of hire, termination dates, social security numbers, work classifications and wages for all Ees employed since November 1978, unlawful)

Jaggars-Chiles-Stovall, Inc. **249 NLRB No. 108**
(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

6067-6067-6400 **Equal employment and/or affirmative action data**

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply equal employment data, unlawful)

6067-6067-6500 **Attendance records of employees**

Allied Paper, Inc., Division of SCM Corporation **JD-341-80**
(E's refusal to furnish U copy of timebook in order to establish whether grievant was probationary Ee where E had refused to process grievance because of Ee's alleged probationary status, not unlawful, where whether Ee worked on certain day determinative of question, U representative could testify what timebook showed, and testimony would be admissible upon E's failure to furnish timebook; further, Ee himself could testify as to his whereabouts on day in question)

6067-6067-7300 **Data concerning employee benefits**

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply forms related to E's insurance and pension programs, unlawful)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(where U requested E to provide it with terms and conditions of employment, including benefits received, E's refusal to include in the list four benefits, namely Ee first quarter wage increase, two savings funds, and Christmas bonus that it had unilaterally discontinued, violative)

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Michigan Drywall Corporation, M

N.L.R.B. v. Michigan Drywall Corporation, M

6067-6067-7400 **Data concerning employment aptitude tests**

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(E's willingness to disclose, at U's request, scores of employment aptitude tests upon receipt of consents from examinees satisfied E's statutory obligation; ct declined to adopt rule that U's interests in arguably relevant information always predominate over all other interests, no matter how legitimate; in view of sensitive nature of information, minimal burden E's offer placed on U, and absence of evidence that E acted to frustrate U in discharge of its statutory responsibilities, ct rejected Bd's conclusion that E violated Act)

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(Bd abused its discretion in ordering E to turn over, in compliance with U's request, employment aptitude tests and ans sheets directly to U, where Bd

6067-6067-7400—Cont.

cited no principle of national labor policy to warrant remedy that would unnecessarily disserve E's concern for test secrecy, Bd's order did not adequately protect secrecy of tests, there is substantial doubt whether U would be subject to contempt citation were it to ignore Bd's restrictions, other effective Bd sanctions are similarly problematic, and U would not be accountable in either contempt or ULP proceedings for inadvertent leaks)

6067-6067-7500 Pension plan and funding

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

6067-6067-7900 Statistical data (race, sex, etc.)

Lucky Markets, Inc. **251 NLRB No. 118**
(E's refusal to furnish information sought by U pertaining to grievance arising from transfer of Ee pursuant to E's affirmative action program, unlawful, since U is entitled to statistical information (Ees' names, ages, race, sex, marital status) requested by U inasmuch as test for U's need for information concerning terms and conditions of employment is simply a showing of probability that desired information was relevant and would be of use to U in carrying out its statutory duty and responsibilities; however, E was not obligated to divulge statistical age data not applicable to Ee's age)

6067-6067-8000 Names and addresses of employees and former employees

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(E's refusal to furnish U names and addresses of all unit Ees almost year after U's certification held violative, since they were necessary for U to perform its role as bargaining representative of E's Ees)

Hecla Mining Company **248 NLRB No. 182**
(where furnishing list of unit Ees names places no unreasonable burden on E, refusal to furnish even w/o showing of need is violative)

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply list of Ees affected by E's unilateral actions in earlier case, unlawful)

The Workshop, Inc. **JD-230-80**
(refusal to supply names and addresses and hiring dates of Ees relevant to and necessary for negotiations, unlawful)

6067-6067-8400 Time study data

Aeolian Corporation, Ivers

6067-6067-8500 Job descriptions

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply job descriptions, unlawful)

6067-6067-9000 Seniority Lists

Raines Lincoln-Mercury, Inc. **JD-224-80**
(failure to supply Ees' dates of hire requested by U for seniority list purposes, unlawful)

6067-6067-9800 Job vacancies

Southwestern Bell Telephone Company **247 NLRB No. 027**
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

6067-7000 Repudiation of contract

Pullman Building Company **251 NLRB No. 145**
(violation, where E refused to abide by state homebuilder-Es' association contract; E's claims that it was not bound because it was operating as developer rather than homebuilder and that it had separate agreement with U, rejected where work was typical homebuilders' work and, as association member, E had invested exclusive bargaining authourity in association and could not enter into separate agreement)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(E's announcement that it was withdrawing its application to be bound by master labor agreement shortly after renewal thereof and refusal thereafter to abide by provisions of master labor agreement, unlawful)

Land Equipment Inc. **248 NLRB No. 098**
(violation where E failed to pay contractually required wages or make required benefit trust fund contributions in repudiation of U's contract with one of two companies found single E herein since Ees of both companies constituted E-wide unit herein, were found stable complement moving from job to job and majority were found to support U at time of repudiation)

D'Angelo

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

6083 REQUIREMENTS FOR TERMINATION OR MODIFICATION OF CONTRACTS - 8(d) PROVISO

6083-0100 Generally

6083-0150 Obligation to refrain from termination or modification without notice and bargaining

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(E's belated termination notice and offer to bargain two years after repudiation of contract and unilateral changes, no defense)

8000 AFFIRMATIVE DEFENSES

8005 DOUBT OF BOARD'S JURISDICTION

Children's Receiving Home of Sacramento **248 NLRB No. 053**
(Bd had properly asserted jurisdiction over children's home where governmental department was connected with home but not joint E with it)

8005-5000 No defense where Board has jurisdiction

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's denial of allegation that it is E engaged in commerce w/i meaning of Act, on ground such allegation states legal conclusion, held w/o merit, where E's admission of facts of commerce in effect admitted both statutory and discretionary jurisdiction of Bd, and E stipulated to jurisdiction in prior R case; moreover, E has presented no newly discovered or previously unavailable evidence or asserted any circumstance which would require Bd to allow relitigation of jurisdiction issue)

8006 BOARD DEFFERENCE TO ARBITRATION

Bay Shipbuilding Corporation **251 NLRB No. 114**
(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since *coverage* which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

8009 DOUBT AS TO UNION'S MAJORITY STATUS (SEE ALSO 530-4080-5000)

8009-1100 Good-faith doubt of majority status justifies refusal to recognize

Roza Watch Corp. **249 NLRB No. 036**
(refusal to recognize and bargain with certified U after expiration of contract, violative where E failed to rebut presumption or sustain good faith doubt of U's continued majority support following expiration of contract)

8009-2200 Doubt not defense if in fact refusal otherwise motivated

Scott Printing Corporation **249 NLRB No. 134**
(Bd, in affirming its prior D/O, found E and its *alter ego* may not now allege that at time of refusal to bargain, they had good-faith doubt as to U's continuing majority support, since defense was based on events induced by *sham* sale to E's *alter ego*; purpose of sale was to enable E to avoid its duty to bargain with U)

8009-5500 Indicia of bad faith in asserting doubt

8009-5525 Unremedied unfair labor practices

Permanent Label Corporation **248 NLRB No. 021**
(refusal to bargain with U which had majority status and engaging in ULP's which prevented fair election violative)

8009-9400 Employee lack of interest

Pennco, Inc. **250 NLRB No. 093**
(fact only 42 striking Ees out of unit of 173 sought reinstatement at conclusion of strike not basis for good faith doubt of majority where E had withdrawn recognition from U 10 months prior to start of strike)

8018 DOUBT AS TO APPROPRIATENESS OF UNIT

8018-0100 Generally

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**

8018-0100—Cont.

(E's withdrawal of recognition from U assertedly because certified unit was inappropriate, violative, even if Bd certification was improper; E is deemed to have consented to Bd's unit determination by acquiescing in the unit determination until after ALJ found E guilty of 8(a)(5) violations over two years later, by executing one-year bargaining agreement with U following date when unit was certified, and by subsequently specifically admitting appropriateness of unit in its ans to GC's C)

8018-2500 Changed circumstances

8018-2512 Relocated operations

Universal Security Instruments, Inc. **250 NLRB No. 092**
(where Ees at new plant are accretion to unit at old plant, refusal to extend contract covering old Ees to Ees at new plant violative)

8018-2525 New operation not accretion

A--1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. **250 NLRB No. 034**
(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable waiver* standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that fact that subsidiaries comprised a single E necessarily established that single unit of Ees of both subsidiaries was appropriate; a single E determination does not necessarily establish that E-wide unit is appropriate)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that Bd's decision was not in accord with past precedent; cases relied on by U contain factual differences that justify different outcome herein, Bd's decision is supported by its accretion decisions, and ct with its limited scope of review cannot say that Bd's determination is erroneous)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that Bd's decision that Ees of both subsidiaries constituted separate units was inconsistent with Bd precedent, where Bd found subsidiaries functioned as substantially separate operations and that two groups of Ees had distinct interests)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(ct held that workers employed by E's newly acquired non-U subsidiary formed a separate bargaining unit from Ees of existing unionized subsidiary, and E's failure to apply existing U contract to non-U subsidiary was not unlawful, even though subsidiaries constituted a single E, where Bd in its discretion found an appropriate unit of non-U Ees separate from those of unionized subsidiary, and it was not ct's duty to determine whether other units would be appropriate inasmuch as Bd's decision was rational, in accord with past precedent, and unit chosen was appropriate)

8018-2550 Accretion does not render existing unit inappropriate

Safety Electric Corporation and San Joaquin Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**
(Ees of two corporations found to be single E shared same type of skills and duties and should be included in same bargaining unit as accretion to original bargaining unit)

8018-7500 Doubt no defense if in fact unit appropriate

Stanley M. Feil, Inc. **250 NLRB No. 065**
(contention of E that manufactured garments that appropriate unit should encompass its factory and warehouse Ees rather than be limited to warehouse Ees, rejected, in view of differences in skills, working conditions and wages of Ees)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(violation where E failed to apply contract to all Ees in appropriate unit and failed after contract's expiration to continue to maintain provisions of contract or to bargain for a new contract covering all unit Ees while erroneously insisting that a large number of Ees were not included in unit; although failure to apply existing contract to all unit Ees was not alleged as violation, matter was fully litigated, since it and later violation both turned on question of who was in appropriate unit)

United States Steel Corporation **248 NLRB No. 090**
(violation where E refused to bargain concerning wages and working conditions of students attending E-sponsored school on basis that they were no longer unit members where Bd found that they remained in unit as Ees while in school)

8019 Rival union claim to recognition

Andersen Sand

8020 DEMAND FOR BARGAINING IN INAPPROPRIATE UNIT

Howard Johnson Company **250 NLRB No. 161**
(E's contention that unit of motel housekeeping Ees was inappropriate because it excluded, among others, front desk clerks, rejected, where case relied on by E is hereby overruled in view of later decisions cited by RD in his D/O directing election which fully supported his determination; *Howard Johnson Co.*, 201 NLRB 376, overruled)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(multi-E association's counterproposal for contract renewal with unwavering demand that lounge musicians be excluded from bargaining unit despite their inclusion for past decade held unlawful withdrawal of recognition; belief that lounge musicians were independent contractors and U's agreement to defer lounge musicians issue does not justify or legitimaze E's withdrawal of recognition)

W

8023 NOT BOUND BY MULTIEMPLOYER BARGAINING

8023-0100 Generally

Pullman Building Company **251 NLRB No. 145**
(violation, where E refused to abide by state homebuilder-Es' association contract; E's claims that it was not bound because it was operating as developer rather than homebuilder and that it had separate agreement with U, rejected where work was typical homebuilders' work and, as association member, E had invested exclusive bargaining authourity in association and could not enter into separate agreement)

8023-2500 Withdrawal timely

Schaetzel Trucking, Inc. **250 NLRB No. 044**
(E's withdrawal held timely, inasmuch as it was undisputed that no negotiations had begun for successor to expired multi-E bargaining agreement at time E withdrew from multi-E unit)

8023-6600 Association exceeded its authority

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(E's failure to honor contract executed by E-association of which it was member violative notwithstanding E believed association had no power to bind it to contract with U because it had reserved to itself right to reject contract since such reservation not communicated to U until after contract reached)

8023-9700 Effect of Section 10(b) 6-month limitation

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from goup bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

8027 LOSS OF MAJORITY (SEE ALSO 530-4080-5000)

8027-0400 No defense where raised after commission of ULP

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

8027-0400—Cont.

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

8027-0900 Employee turnover

Taylor Hospital **249 NLRB No. 031**
(Ee turnover, no defense where no evidence was adduced to rebut presumption that new Ees would support U in same ratio as Ees they replaced)

Glomac Plastics, Inc. v. N.L.R.B. **600 F.2d 3 (C.A. 2, 1979)**
(ct entered judgment enforcing bargaining order where ct had remanded cause to Bd for reconsideration of propriety of bargaining order and, pursuant to that remand, Bd had reassessed remedial order and, notwithstanding its assumption of the accuracy of the E's principal claims of substantial Ee turnover in unit and/or abandonment of unit by U, nevertheless entered supplemental order affirming that the original relief granted remained appropriate)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

8027-1000 Packing the unit

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

8027-3600 Not defense where employer is responsible for loss

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(inducement of Ees to abandon support for U, unlawful)

8027-7200 Replacement of non-ULP strikers

Pennco, Inc. **250 NLRB No. 093**
(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

8027-9000 Employee petition repudiating certified union

P. A. Incorporated **248 NLRB No. 077**
(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

C. Langenfelder

8027-9500 Checkoff authorizations

The Workshop, Inc. **JD-230-80**
(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's after E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

8033 UNION POSITION INCONSISTENT WITH ITS OBLIGATION TO REPRESENT EMPLOYEES

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

8034 ABANDONMENT OF EMPLOYEES BY UNION

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

Glomac Plastics, Inc. v. N.L.R.B. **600 F.2d 3 (C.A. 2, 1979)**
(ct entered judgment enforcing bargaining order where ct had remanded cause to Bd for reconsideration of propriety of bargaining order and, pursuant to that remand, Bd had reassessed remedial order and, notwithstanding its assumption of the accuracy of the E's principal claims of substantial Ee turnover in unit and/or abandonment of unit by U, nevertheless entered supplemental order affirming that the original relief granted remained appropriate)

8036 CONDUCT OF UNION REPRESENTATIVE DURING BARGAINING

8036-5500 Attacking preconditions to bargaining

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8036-6000 Lack of diligence in pursuing bargaining objectives

Tri-State Carpenters

8042 EXISTENCE OF BINDING AGREEMENT

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(even assuming parties' private settlement agreement had been executed, whereby E had withdrawn its exceptions to RD's report on challenged ballots and U had agreed to withdraw ULP charges, terms of settlement agreement had no bearing on E's obligation to recognize and bargain with U, where U received majority vote in election; E's allegation that U breached agreement held immaterial to issues involved in instant summary judgment proceeding and did not justify E's refusal to bargain)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(contract not void for uncertainty, where E signed extension stipulating that E would be bound by whatever terms and conditions were negotiated with multi-E association since there was no evidence of coercion or duress and E and U actually continued their collective bargaining relationship beyond one year provided by extension stipulation and in accordance with past practice)

8045 DEFENSES BASED UPON CONTRACT CONSIDERATIONS

8045-3300 Incomplete contract

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(two inadvertent errors in written agreement submitted by U to E did not excuse E's complete refusal to execute agreement previously reached by U and E)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(contract not void for uncertainty, where E signed extension stipulating that E would be bound by whatever terms and conditions were negotiated with multi-E association since there was no evidence of coercion or duress and E and U actually continued their collective bargaining relationship beyond one year provided by extension stipulation and in accordance with past practice)

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E association and U had reached agreement on terms of contract fact that another separate agreement covering wage rates for other types of jobs still needed to be negotiated does not affect legal status of first contract)

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

8045-3700 Contract provisions expressly authorize actions

8045-3725 Management rights clause

Universal Security Instruments, Inc. **250 NLRB No. 092**
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Lever Brothers Company **JD-301-80**

8045-3725—Cont.

(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

8045-6200 Breach of contract

8045-6240 Grievance and arbitration provisions

United States Postal Service **251 NLRB No. 033**
(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

8045-6700 Unlawful provision

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8045-8300 Automatic Renewal of Contract

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

8045-9500 Termination of contract

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

8052 DEFENSE OF ECONOMIC HARDSHIP

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand requiring Bd to admit newly discovered evidence pertaining to post-hearing agreements reached by parties, Bd affirmed ALJ's conclusion that new evidence established that, in negotiating with U resulting in agreement for substantially lower economic package than was had previousuly, E did not maintain its bargaining strategy for other than legitimate business considerations occasioned by its severe financial condition)

N.L.R.B. v. Inland Cities, Inc. **618 F.2d 117(T) (C.A. 9, 1980)**
(E who signed interim agreement which bound him to outcome of negotiations by E-association violated Act when it refused to comply with contract; repudiation is not excused because E was motivated by economic necessity)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**
(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding asserted good faith doubt of majority U status, where E did not notify U of intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

8054 WAIVER (SEE ALSO 775-0000)

8054-0100 Generally

Lever Brothers Company **JD-301-80**
(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

8054-0133 Waiver must be explicit

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Tenneco Chemicals, Inc. **249 NLRB No. 171**

Arizona Public Service Company **247 NLRB No. 054**
(U held not to have waived its statutory right to bargain over E's subcontracting practices after existing subcontracting clause was declared invalid; contract *reopener* clause clearly and unmistakably manifested intention to preserve, rather than to forfeit, right to bargain about subject covered by any clause which had been invalidated, and *management rights* and *zipper* clauses contained no language which clearly and unmistakably committed U to forfeiture of right to bargain with E over subcontracting issue)

Lever Brothers Company **JD-301-80**
(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

8054-2000 Omission from contract of matters subject to collective bargaining does not constitute waiver

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

8054-4000 Abandonment of demands does not constitute waiver

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**
(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment,* requires *conscious relinquishment* by U)

8054-5000 Effect of zipper clause

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**
(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment,* requires *conscious relinquishment* by U)

Arizona Public Service Company **247 NLRB No. 054**
(U held not to have waived its statutory right to bargain over E's subcontracting practices after existing subcontracting clause was declared invalid; contract *reopener* clause clearly and unmistakably manifested intention to preserve, rather than to forfeit, right to bargain about subject covered by any clause which had been invalidated, and *management rights* and *zipper* clauses contained no language which clearly and unmistakably committed U to forfeiture of right to bargain with E over subcontracting issue)

8054-9000 Failure to request that employer bargain over impact of changed conditions

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

8054-9000—Cont.

Charmer Industries, Inc. **250 NLRB No. 031**
(U did not waive its right to contest Es' unilateral change in work procedures where U did make request for bargaining over such procedures)

8072 PENDENCY OF BOARD PROCEEDINGS

8072-4200 Pendency of ULP charges

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

8072-6300 Request for review of Regional Director's decision

Madison Detective Bureau, Inc. **250 NLRB No. 062**
(refusal to bargain with certified U before there has been final action by Bd on request for review of RD's Decision on objections, violative)

8079 ULP's BY OTHER PARTY

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

8081 INVALIDITY OF CERTIFICATION OR RECOGNITION

8081-1200 Denial of fair hearing

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's contention that certification was improper because E had been denied hearing on challenged ballots, rejected, since contention was merely attempt to relitigate matters in C proceeding which had been previously litigated and decided in R proceeding)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(hearing was not required on whether alleged misrepresentation had impact on election and whether attributable to U since no material issues of fact existed where E failed to come forward with specific evidence to refute RD's finding that statement did not affect Ees' votes)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

8081-2500 New matter or evidence

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's contention that certification was improper because U breached alleged private settlement agreement which is newly discovered and previously unavailable evidence, rejected, since alleged breach of agreement has no bearing on issues herein)

8081-4300 Union's conflict of interest

N.T. Enloe Memorial Hospital **250 NLRB No. 078**
(in unit of Ees represented by association which admitted supervisors to membership, there is no conflict of interest which would disqualify association as bargaining representative where one unit member is supervisor but is not engaged in collective bargaining)

8081-5000 Fairness of election

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(E's refusal to bargain with U representing unit of plant operations department Ees at hospital on ground U's certification was invalid because unit was inappropriate as matter of law unlawful, where E did not raise any issue which is properly litigable in ULP proceeding herein, and ct decisions relied on by E for its position in opposition to GC's mtn for summary judgment are not controlling)

Valley Rock Products, Inc. **JD-(SF)-285-79**
(defense sustained in view of threats and assaults by U representative against E's officers, and failure to count ballot of Ee on leave of absence at time of election)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(E's contention its refusal to bargain justified by alleged misrepresentations of Ee who was active in U campaign, rejected, since remarks not attributable to U where U neither authorized nor condoned them, and remarks did not create atmosphere of fear and violence but rather had no effect on Ees' votes)

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(8(a)(5) violation upheld where on remand Bd inferred that supervisors' pro-U activities did not impair Ees' free choice in election, and ct found that Bd's inference did not transgress bounds of reason)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**

8081-6200 Appropriateness of unit

Safety Electric Corporation and San Joaquin Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**
(Ees of two corporations found to be single E shared same type of skills and duties and should be included in same bargaining unit as accretion to original bargaining unit)

8081-7500 Validity of ballots

Valley Rock Products, Inc. **JD-(SF)-285-79**
(defense sustained in view of threats and assaults by U representative against E's officers, and failure to count ballot of Ee on leave of absence at time of election)

8081-8100 Validity of authorization cards

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(card valid, where objective facts, as evidenced by events contemporaneous with signing, did not show that alleged misrepresentations made to signer that *everybody* had signed was decisive factor causing him to sign)

8081-9300 Union lacked majority when recognized

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's denial that U was Ee representative held w/o merit, where Bd, in prior decision certifying U as Ee representative, disposed of such issue, and it therefore cannot be relitigated herein)

8082 ELIMINATION OF UNIT OR JOB CLASSIFICATION FROM UNIT

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(transfer of Ees from E to E's alter ego, unlawful, since E's purpose for transfer was to avoid its collective bargaining obligation to Ees represented by U)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8084 OTHER MATTERS PERTAINING TO PRIOR REPRESENTATION CASE

Howard Johnson Company **250 NLRB No. 161**
(although E did not receive Bd's telegrams notifying it of Bd's rulings on E's requests for review of RD's D/O directing election, E had indirectly re-

8084—Cont.

ceived notice of Bd's denial of requests for review, and E's assertion that its technical right to receive notice from Bd itself negated its duty to bargain held not supported by law; Bd is not required to place consequences of its own delay, even if inordinate, upon wronged Ees to benefit of wrongdoing E)

8085 STATE CERTIFICATION

Taylor Hospital **249 NLRB No. 031**
(refusal to bargain, unlawful where certification by state labor board met Bd's standards for granting comity and there was no newly discovered evidence presented or lack of due process or other grounds found for refusing comity, and long passage of time since certification due to E's exhausting its remedies, does not warrant relieving E of its bargaining obligation)

8090 CHANGE IN EMPLOYER'S OPERATIONS

8090-0100 Generally

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

8090-2000 Closing or sale of department, division, or operation

Scott Printing Corporation **249 NLRB No. 134**
(Bd, in affirming its prior D/O, found E and its *alter ego* may not now allege that at time of refusal to bargain, they had good-faith doubt as to U's continuing majority support, since defense was based on events induced by *sham* sale to E's *alter ego*; purpose of sale was to enable E to avoid its duty to bargain with U)

8090-4000 Transfer of operations to another location

Campo Slacks, Inc. and J

Monongahela Valley Hospital, Inc. **248 NLRB No. 013**
(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

8090-5000 Administrative action eliminating employee category

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**
(E's withdrawal of recognition from and refusal to continue to recognize and bargain with U as representative of E's lessee drivers, unlawful; contrary to E's contention, drivers were found to be Ees and not independent contractors)

8090-6000 Subcontracting

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

8090-9000 Reopening after shutdown

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

536 UNION COERCION OF EMPLOYEES (8(b)(1)(A))

0100 GENERALLY

0150 SCOPE OF PROSCRIPTION

0150-7500 Conduct reasonably calculated to coerce

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(U's unreasonable and arbitrary course of action may constitute breach of duty of fair R even w/o hostile motive)

1200 UNION INTERFERENCE WITH EMPLOYEE REFRAINING FROM ENGAGING IN UNION ACTIVITY

Machinists, Lodge 727 (Lockheed-California Company, A Division of Lockheed Corporation) **250 NLRB No. 032**
(U's refusal to give effect to member's resignation violative where member willing to meet financial core membership obligation, no provision in U's constitution which restrains membership resignation, and effect of membership is to deprive member from accepting employment wherever U is involved in strike as such conduct prohibited by constitution)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(specific evidence of intent to encourage U membership not essential; *U violates 8(b)(1)(A) and (2) of Act if it or its agent adversely affects Ee's job for purely personal or arbitrary reasons*)

2500 FORM OF UNION CONDUCT

2501 GENERALLY

2501-8000 Noncoercive circumstances

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(where E merely introduced U officials to its Ees; officials had Ees sign U membership cards and stated that they wanted Ees to get into U apprenticeship program, not violative because U had majority support and E's actions were non threatening)

Teamsters Local 515 (Roadway Express, Inc.) **248 NLRB No. 020**
(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

2505 INTERROGATION OF EMPLOYEES

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**
(questioning members about conversations with Bd agent w/o giving assurances against reprisal, violative)

2509 THREATS TO EMPLOYEES

2509-0100 Generally

Transport Workers Union of America, Local 514 (Kothe, Nichols

2509-0600 Prohibiting resignation from union during strike

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(violation by informing member that he could be fined for crossing picket line during strike and that he could not resign during strike)

2509-1200 Refusal to refer

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to refuse to refer Ee for future employment because he opposed proposed U dues increase)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Bechtel Power Corporation **248 NLRB No. 166**
(statements made by U officer at a bar during argument on U politics implying refusal of hiring hall referrals to Ee-members because they supported candidates running in opposition to U incumbent officers, violative)

2509-2500 Loss of employment

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to cause discharge of Ee and to keep him from working in the industry because he opposed U dues increase)

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(U steward's statement to Ee that if he did not obtain U permit other Ees would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as no evidence that U sought to involve E)

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(threats of job loss or bodily harm for failing to support incumbent for office in local U, unlawful)

Baine Service Systems, Inc. **248 NLRB No. 087**
(statement to Ees that they were compelled to join U as condition of employment)

Siro Security Service, Inc. **247 NLRB No. 157**
(U threatening to cause discharge of Ees if they did not execute applications and checkoff authorizations when it did not have majority and w/o according Ees 30 day grace period)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(threat that U would seek to impair job status of member for seeking access to Bd for decertification purposes, unlawful)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to keep Ee from working in the industry where there was a U because he opposed increase in U dues)

2509-6200 Lack of representation

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to refuse to represent Ee because he opposed increase in U dues)

2509-7500 Violence

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(threats of job loss or bodily harm for failing to support incumbent for office in local U, unlawful)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(shop steward's telling two of E's drivers that because they crossed picket lines U had their number and they were going to get hurt by outside teamsters, violative notwithstanding shop steward's concluding statement that *he was telling them as a friend*

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(where truckdriver refused to join strike and attempted to cross U's picket line accompanied by his wife and son, U agent's telling truckdriver that he knew where truckdriver lived and where his son went to school, violative since, in the context of U's agent's other threats of bodily harm to truckdriver, U agent impliedly threatened to harm truckdriver's family)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**

2509-7500—Cont.

(where truckdriver refused to join strike and attempted to cross picket line accompanied by his wife and son, U agent's telling truckdriver that *with a few broken bone, you wouldn't be able to drive that truck,* violative)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(international and local U's threats, through local's business agents (appointed by international during its trusteeship of local) of physical violence against member for his talk about running against business agent in election, unlawful)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(local U's threat of serious physical harm or violence against member for filing charge with Bd against U, unlawful)

Construction Teamsters Local 216, IBT **JD-(SF)-202-80**
(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities agaisnt E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(violation where strikers made various threats, during U-authorized and supervised strike, to inflict bodily harm upon Ees who did not honor U's picket line)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) **JD-195-80**
(violation where pickets attempted to cause nonstriking Ees to honor picket line by blocking ingress to premises, hitting Ees' cars with fists and picket signs, damaging and climbing on cars and obscouring Ees' vision while they attempted to enter premises)

Local 6, Longshoremen's Association (Baine Service Systems Incorporated) **JD-774-79**
(U president's telling Ee in presence of many other Ees, that he would kill Ee if Ee did not stop his activity towards removing U as established bargaining agent at E's nursing home, violative)

2509-8100 Change of working conditions

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where, after charge was filed against U for unlawful refusal to approve requested change in schedule because of requesting Ee's nonmembership in U, U adopted policy of disapproving all requests for change of schedule and told Ees it represented that such policy was being enforced because Ee had filed ULP charge against it with Bd)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where during period there was in effect U's unlawful order to approve no requests for change in schedule--because of pending ULP charge against it alleging discriminatory refusal of such request--U disapproved Ees' request for changes in schedule pursuant to said order)

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(threatening Ee with job-related reprisals because she initiated grievance proceedings, unlawful)

2509-9300 Fines and other sanctions for violating union rules and opposing union

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening Ee with internal U discipline because he opposed increase in U dues)

Transport Workers Union of America, Local 514 (Kothe, Nichols

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's conditioning of threats of discipline, including use of fines, on whether or not members maintained or withdrew decertification ptn, unlawful)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's threats to members of fines and/or expulsion for circulating ptn seeking to undermine U's declared bargaining goals regarding insurance coverage, and thereby compromising contract negotiations, not unlawful, since U legitimately exercised its right to prevent erosion of its bargaining representative status and to use discipline against members who refused to assist U in solidifying such status)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(violation by informing member that he could be fined for crossing picket line during strike and that he could not resign during strike)

2509-9500 Unspecified

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening Ee with reprisals because he opposed increase in U dues)

2516 CONDUCT TO PROTECT STATUS AS REPRESENTATIVE

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**
(certified bargaining representative's removal of notices concerning grievances posted by rival U in derogation of certified representative from bulletin board while leaving rival U's organizing material undisturbed, not unlawful; rival U's notices were not protected and there was no evidence of coercion of Ees or retribution or retaliation for posting notices again or proof of blanket denial of access to Ees by rival U)

2518 VIOLENCE AGAINST EMPLOYEES

2518-2000 On picket line

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(threats of bodily harm to replacement Ee, violative)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) **JD-195-80**
(violation where pickets attempted to cause nonstriking Ees to honor picket line by blocking ingress to premises, hitting Ees' cars with fists and picket signs, damaging and climbing on cars and obscouring Ees' vision while they attempted to enter premises)

2518-4000 Away from picket line

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' threats to Ees of company which provided protection services to E at struck premises, violative)

2518-6000 Mass picketing

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' blocking entrance to parking lot while carrying ax handles, iron bars, signs and boards with large nails protruding from them, violative)

2518-8000 Obstructing ingress to and egress from plant

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' threats that there would be trouble if driver of fuel truck insisted on entering plant, violative)

2518-9000 For intra-union or contra-union activity

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(pistol-whipping by local U's agent of member for opposing election or leadership of local's business manager, unlawful)

2518-9000—Cont.

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's conduct in calling to his assistant in presence of Ee that Ee was *with the company*, and further stating *we're going to get him*, unlawful, as attempt to threaten opponent of U with violence)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's resort to physical force in pushing Ee, who had spearheaded decertification effort, toward apparently armed fellow agent, and doing so in view of other Ees, unlawful, since it was not only attempt to punish Ee involved, but also to demonstrate to other Ees how U intended to treat its Ee-opponents)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's gestures drawing Ees' attention to his apparently armed condition in order to cause them to believe he was carrying a weapon, accompanied by remarks threatening resort to physical violence, unlawful, since conduct was intended to frighten Ees because they had spearheaded decertification effort)

2519 VIOLENCE AGAINST SUPERVISORS

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' blocking entrance and *rocking* cars carrying supervisory personnel and company attorneys in effort to overturn them, violative)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' blocking entrance and destroying tires of several cars of different supervisors with nailed board or slashing tires with knife, violative)

2520 BLACKLISTING OF EMPLOYEES

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(U business agent's calling Ee, who refused to join strike and refused to honor U's picket line, a scab, and telling Ee that he would never work in the state as teamster again, and that there would be lot of people watching him, violative, since U agent's remarks amounted to threat to blackball Ee from employment as teamster)

2522 DEMANDS AGAINST EMPLOYER

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

Siro Security Service, Inc. **247 NLRB No. 157**
(U demanding discharge of Ee who opposed U as bargaining representative and objected to deduction of U dues w/o his consent, unlawful)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(causing termination of Ee, suspended from local, from film crew because of U's threats to withhold U seal from finished film, violative, where E would have retained Ee irrespective of his lack of membership in local had not U threatened retaliatory action)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(although maintaining integrity of U's established trademark which has purpose of promoting employment of U members under U conditions is protected, withholding U seal for unlawful objectives is not privileged)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....*scab*)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

Moser Brothers Welding, Inc. **JD-(NY)-38-80**
(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

2527 VIOLENCE OR THREATS THEREOF AGAINST EMPLOYERS KNOWN TO EMPLOYEES

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's statement to E's president, made repeatedly in presence of Ees entering plant on election day that E's president ...*better watch out. We're bad losers* held unlawful attempt to impress upon Ees that opposition to U was risky)

2529 VIOLENCE OR THREATS THEREOF AGAINST OTHERS

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(striking Ees' threat to inflict bodily injury upon driver of independent supplier, violative)

2530 REPRISALS AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES

United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1989 (Caterpillar Tractor Company) **249 NLRB No. 123**
(Institution of internal U disciplinary proceeding against some members, selecting trial committee, and issuing formal notice of hearing on these charges because these Ee-members had appeared as witnesses and testified adversely to U's grievance in arbitration hearing held pursuant to provisions of collective-bargaining agreement, violative, notwithstanding charges were later withdrawn since Respondent took no specific action to repudiate coercive effect of its conduct)

Teamsters Local 515 (Roadway Express, Inc.) **248 NLRB No. 020**
(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

Construction Teamsters Local 216, IBT **JD-(SF)-202-80**
(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities against E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

2545 HIRING HALL AND OTHER REFERRAL PRACTICES

2545-0100 Generally

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(bonafide hiring hall arrangement is characterized by agreement between parties for E to notify U as jobs become available and U to send E sufficient manpower for E to fulfill his employment requirements)

2545-0600 Requirement of referral

Longshoremen's Union, Local 6 (Industrial Employers and Distributors Association) **249 NLRB No. 127**
(no violation where U hiring hall disciplined member by revoking his black book status which evidences holder's work experience and U determination that holder possesses highest adherence to principles of trade unionism, since revocation did not diminish member's hiring status or employment rights with respect to job calls involving skilled or unskilled work)

2545-1200 Refusal of referral

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(refusal to refer members because of their opposition to U officials violative)

Local 873, Electrical Workers (Kokomo-Marian Division, Central Indiana Chapter, National Electrical Contractors Association, Inc.) **250 NLRB No. 113**
(refusal to refer U member who was rightfully terminated from apprenticeship program not violative where collective-bargaining agreement provided that only journeyman or participants in training program could be referred; thus, presumption that U's action of refusing to refer U member will tend to coerce other members as a display of U power rebutted)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

2545-1200—Cont.

(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Bechtel Power Corporation **248 NLRB No. 166**
(absent any recall rights and statistical analysis of actual recall of laid-off Ees showing discrimination towards swing shift Ees, either individually or as group, GC failed to sustain burden proving such discrimination by U hiring hall practices, and thus by E)

Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) **248 NLRB No. 174**

Iron Workers, Local Union 433 (Stockton Steel Fabricators and Erectors, Inc.) **248 NLRB No. 033**
(U business agent at exclusive hiring hall who maintained separate lists for priority referrals and one for all others did not violate Act when he placed member of another local on non-priority list as this was w/i requirements of contract notwithstanding list keeping requirements of contract were not totally complied with)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(Bd found refusal to refer member by U local unlawful notwithstanding lack of request for referral, since request would have been futile where U's agent had threatened retaliation against his political opponents in U which included member herein, and had effectuated discriminatory discharge of member; moreover U's self-serving memoranda recording its efforts to contact member for referrals after latter finally registered for referrals were made pursuant to procedures introduced to justify U's discriminatory referrals)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(no unlawful refusal of local U's hiring hall to refer where there was no request for referral or explanation for lack of request)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(international and local Us held to have violated 8(b)(1)(A) when business manager appointed by international refused to refer one member because of his intra-U opposition to business manager, and he and his appointee refused to refer another member who had sought imposition of trusteeship while business manager was acting business manager, run against him in election, and filed intraU charges against him)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(local U agent's physical attack on member while he sought referral unlawfully deprived him of employment through job referrals)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(Bd held that U local had unlawfully refused to refer 2 members for work where GC showed that on dates in question and thereafter U's agent threatened to retaliate against his political opponents in local which included the two members, and manipulated hiring hall in order to discriminate against them; it was not necessary to show that jobs were available at time; and burden of negating GC's *prima facie* case fell on U as sole custodian of hiring hall records and its failure to produce them created adverse inference)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(no violation by local and international Us during international's trusteeship of local for refusal to refer two members seeking referrals as stewards where one steward did not even ask for referral to job as common laborer when told it was open, and other's name was not on out-of-work list).

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(refusal to refer members who protested hiring hall operation policies (particularly selection methods employed by U officials operating hall) at U meetings, to local and International, to NLRB and other government agencies)

International Longshoremen's Association, Local 1414 **JD-357-80**
(unnecessary that GC demonstrate what specific jobs were available at time of discriminatory refusal to refer, inorder to establish violation)

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9)**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

2545-1500 Preference for union members

Local Union 633, Plumbers (B

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Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) **248 NLRB No. 174**

Sachs Electric Company **248 NLRB No. 092**
(U's request that members of sister Us (*travelers*), who had been referred out of U's hiring hall, quit their jobs in favor of unemployed members of U, coercive and unlawful, notwithstanding that requests were not accompanied by direct threats of reprisal; in view of fact that of 32 travelers none remained employed in short period of time, it strains credibility and contradicts record testimony to claim that they quit *voluntarily* and as a *courtesy* to their U brethren)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 006**
(violation where locals discriminated in operation of their hiring halls by preferring members to non-members and others as yet unidentified non-members in making job referrals; bypassing discriminatees because members were *recalled* or *requested* by Es not valid defense w/o letter of confirmation to U by Es, proving such specific request, as required by Consent Decree)

2545-1800 Refusal to comply with seniority procedures

International Longshoremen's Association, Local 1414 **JD-357-80**
(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

2545-2500 Refusal of clearance by hiring hall

General Truck Drivers, Warehousemen

2545-3100 Denial of access to employment roster

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**

International Photographers of the Motion Picture Industry, Local 659, et al.(Medway Productions, Inc.) **250 NLRB No. 052**
(U violated 8(b)(2) and 1(A) where under its preferential hiring agreement requiring new hires to have previous work experience with an E signatory to U contract, it refused to clear qualified applicants for employment as cameramen because they lacked U membership)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(removal of Ee's name from hiring hall's *out-of-work* list precluding Ee from being dispatched in manner prescribed by contractual rules held violative where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

2554 REQUIRING PAYMENTS OTHER THAN DUES

2554-2500 Fine, assessment, reinstatement fee or back dues

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**
(where U and E entered into strike settlement agreement containing *amnesty* clause and U filed charges and imposed fines against members for strike breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

2556 REFUSAL TO ALLOW WITHDRAWAL OF CHECKOFF AUTHORIZATIONS

American Nurses' Association **250 NLRB No. 175**
(refusal to honor revocations of checkoff authorizations, not unlawful where Ees failed to revoke w/i appropriate period)

American Nurses' Association **250 NLRB No. 175**
(Ees prohibited from modifying dues checkoff authorization, where Ees could not make unilateral changes in their preexisting checkoff authorization contrary to contract)

American Nurses' Association **250 NLRB No. 175**
(resignations from U did not revoke dues checkoff authorization, notwithstanding GC's contention that resignations from U membership served to

2556—Cont.

revoke checkoff authorizations insofar as they specifically refer to deductions and payment of monies in an amount equal to *all my U membership dues and membership assessments*)

United States Postal Service **248 NLRB No. 002**

(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

2559 REFUSAL TO ACCEPT DUES OR OTHER PAYMENTS

General Truck Drivers, Warehousemen

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

2561 DEMAND FOR CHECKOFF DUES OF RESIGNED MEMBERS

Peoria Newspaper Guild, Local 86 (Peoria Journal Star) **248 NLRB No. 028**

(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

2562 DEMAND FOR DUES OF MEMBERS WHO HAVE REVOKED CHECKOFF AUTHORIZATION

United States Postal Service **248 NLRB No. 002**

(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

2563 MINORITY UNION'S ACCEPTANCE OF EXCLUSIVE BARGAINING AUTHORITY

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**

(violation where U accepted recognition and executed contract at time when U did not represent uncoerced majority of Ees, and E did not employ work force which was substantially representative of anticipated Ee complement)

2563-5000 Good faith immaterial

Siro Security Service, Inc. **247 NLRB No. 157**

2564 UNION'S ACCEPTANCE OF REPRESENTATION STATUS FOR INAPPROPRIATE UNIT

Baine Service Systems, Inc. **248 NLRB No. 087**

(U and E by executing contract when both parties knew that size of unit was going to increase violated Act)

2565 CHANGE IN REPRESENTATIVE THROUGH CHANGE IN LOCAL

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**

(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

2567 RECOGNITION OF UNION DURING PENDENCY OF REAL QUESTION OF REPRESENTATION

Queen City Paving Co., Inc. **JD-(SF)-156-80**

(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec. 8(f) was no defense because of existence of qcr)

2569 RENEWAL OF CONTRACT AFTER LOSS OF MAJORITY

2569-3300 During insulated period of contract

Clark Equipment Company **249 NLRB No. 094**

(no violation of 8(a)(2) by E or 8(b)(1)(A) by incumbent U where they negotiated and executed new contract when incumbent no longer represented majority of E's Ees, since E lacked requisite knowledge of incumbent U's loss of majority support; dissidents' committee and its leader withheld from E during insulated period the very evidence that would have required E to cease negotiating with incumbent U)

2570 ACCEPTANCE OF ASSISTANCE FROM EMPLOYER

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

(violation by E and favored U where E recognized and executed agreement with such U when U did not represent majority of E's Ees)

2572 EXECUTION OR MAINTENANCE OF INVALID UNION-SECURITY AGREEMENT

United States Postal Service **248 NLRB No. 002**

(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

2576 DISCRIMINATORY MAINTENANCE OF CONTRACT CLAUSE

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**

(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

2576-5000 Superseniority

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**

(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

2581 DUTY OF FAIR REPRESENTATION

2581-0100 Generally

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**

(duty of fair representation is also implicit in NLRA because that statute affords Us exclusive power to represent all Ees of bargaining unit)

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**

(right to bring unfair representation actions is judicially *implied from the statute and the policy which it has adopted* and Congress has not specified what remedies are available)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(in order to determine whether U has fairly represented Ees, it is recognized that wide range of reasonableness must be allowed representative in serving unit it represents, subject to complete good faith and honesty of purpose in exercise of its discretion)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

2581-0100—Cont.

(U's unreasonable and arbitrary course of action may constitute breach of duty of fair R even w/o hostile motive)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**
(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

2581-0120 Section 7 as source of employee's right to fair treatment by representative

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

2581-0140 Section 8(b)(1)(A) as encompassing duty to represent fairly

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(in order to determine whether U has fairly represented Ees, it is recognized that wide range of reasonableness must be allowed representative in serving unit it represents, subject to complete good faith and honesty of purpose in exercise of its discretion)

2581-0160 Duty owed all employees whom union represents

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**
(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-0180 Duty may be breached by action or inaction

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

2581-3300 **Forms of representation to which duty applies**

2581-3307 Union security requirements

Actors' Equity Association **247 NLRB No. 172**
(U unlawfully failed to represent non-resident alien members by maintaining and enforcing U security requirement that such members pay 5 percent of gross earnings while requiring significantly less dues from other members)

2581-3314 Operation of referral system

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(removal of Ee's name from hiring hall's *out-of-work* list precluding Ee from being dispatched in manner prescribed by contractual rules held violative where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Plumbers, Local Union No. 412 (Thomas Mechanical, Inc.) **249 NLRB No. 098**
(failure to refer *traveler* U member from local U hiring hall not violative where *traveler* failed to follow procedures for registration for referral and also local U had rule which required *traveler* to be in jurisdiction 3 years before he could transfer into local U)

Local Union 633, Plumbers (B

Local Union 633, Plumbers (B

Local Union 633, Plumbers (B

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U which charged Ees monthly referral fee for participation in its hiring hall violated Act where it never effectively operated referral hall and purpose of fee was to make money for U)

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(bonafide hiring hall arrangement is characterized by agreement between parties for E to notify U as jobs become available and U to send E sufficient manpower for E to fulfill his employment requirements)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, not does use of subjective criteria in referral such as financial need necessarily reflect discriminatory movite and violative per se, provided such criteria subordinated to overall established objective system)

International Longshoremen's Association, Local 1414 **JD-357-80**
(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

2581-3316 Operation of pension and health trust funds

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(Bd properly dismissed complaint alleging that maintenance and enforcement of cancellation provisions of pension plan unlawfully coerced Ees in exercise of right to vote to decertify U as Ee representative in that automatic cancellation rules effectively dictated Ees' choice to vote for continued representation by U; there was no evidence in the record or from the provisions themselves of intention to violate Act; provisions, on their face and as here applied, were not discriminatory or coercive; and their impact on Ee voting rights was indirect and served a legitimate business purpose of pension fund)

2581-3338 Operation of driver dispatch system

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(allegation that U business agent (Moody) willfully misrepresented to Ee that driver preference had been eliminated by decision of joint labor management committee establishing new dispatch rules for E's drivers, dismissed, where it was not apparent why business agent would want to *willfully* conceal driver preference retention from Ee, his conduct hardly even rose to arguable level of negligence, and there was, at worst, misunderstanding by agent of thrust of Ee's inquiry regarding committee's decision)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(allegation that U violated Act by failing and refusing to seek E compliance with decision of joint labor management committee to preserve driver preference in dispatch procedure for E's drivers, dismissed, where U business agent, in absence of any knowledge of, or grievance about, noncompliance was not guilty of ULP for failing to monitor compliance with decision)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(allegation that U business agent (Horta) willfully misrepresented to Ee that decision by joint labor management committee establishing new dispatch rules for E's drivers, had eliminated driver preference from dispatch procedure, dismissed, where, in fact, driver preference had been temporarily eliminated upon adoption of new dispatch rules)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(allegation that U business agent failed and refused to prosecute in good faith Ee's grievance as to elimination of driver preference in E's dispatch procedure upon adoption of new dispatch rules, dismissed, where Ee had already been well represented by another business agent officially in charge of grievance presentation, merits of grievance had already been passed upon at time of agent's remark, and his candor about his own confusion with respect to preference practice must have seemed to him of little moment in the given situation)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**

2581-3338—Cont.

(allegation that U business agent, having advised Ee that he would seek restoration of driver preference rule at meeting of joint labor management committee considering new dispatch rules for E's drivers, took contrary position at such meeting and supported E's proposal to eliminate driver preference, dismissed, where at meeting agent affirmed existence of driver preference rule and, while he made no further effort to urge retention of driver preference, he appropriately deemed unnecessary any additional exhortation)

2581-3356 Informing employees of obligation under contract

Western Conference of Teamsters, IBT (California Cartage Company, Inc.) **251 NLRB No. 052**
(where U negotiated contract with E and failed to adequately explain all ramifications of proposals, some of which involved Ees foregoing salary increase, no violation, where U's failure did not amount to intentional, wilfull misleading of Ees)

2581-3370 Negotiation of agreements

2581-3370-0100 Generally

Western Conference of Teamsters, IBT (California Cartage Company, Inc.) **251 NLRB No. 052**
(where U negotiated contract with E and failed to adequately explain all ramifications of proposals, some of which involved Ees foregoing salary increase, no violation, where U's failure did not amount to intentional, wilfull misleading of Ees)

2581-3370-5000 Failure or refusal to cover all Employees in certified unit in negotiated contract

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

2581-3370-8900 Strike settlement agreement

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**
(where U and E entered into strike settlement agreement containing *amnesty* clause and U filed charges and imposed fines against members for strike breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

2581-3384 Presentation of grievances

Steelworkers, Local No. 3029 (Gardner-Denver Company) **250 NLRB No. 114**
(U's failure to process grievance through to ultimate stage of contract's grievance procedures not violative where U acted in good faith and exercised its discretion in determining merits of case)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(U's failure to notify Ees that it was willing to process their apparently meritorious grievances, or its unsuccessful perfunctory attempt to notify one of the Ees, unlawful; U agent's asking Ee whether he had grievance forms did not constitute adequate communication to Ee, and it was not sufficient for U, after filing of charges, to have its lawyer request E to reinstate Ees)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(although it was bad form for U business agent to engage in argument with Ee at grievance proceeding dealing with Ee's problem, argument concerned technical matter of little importance and did not amount to failure to prosecute in good faith Ee's grievance)

San Francisco Web Pressmen and Platemakers' Union No. 4 (San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency) **249 NLRB No. 023**
(U's failure to carry grievance to arbitration stage of procedure not breach of duty where U conducted investigation and determined to its satisfaction that E's exertions were true; moreover it need not obtain explanation from grievant as Bd has not established that as requirement)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(allegation that U business agent failed and refused to prosecute in good faith Ee's grievance as to elimination of driver preference in E's dispatch procedure upon adoption of new dispatch rules, dismissed, where Ee had already been well represented by another business agent officially in charge of grievance presentation, merits of grievance had already been passed upon at time of agent's remark, and his candor about his own confusion with respect to preference practice must have seemed to him of little moment in the given situation)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(U's efforts on Ee's behalf in grievance procedure, though not optimal, rose above perfunctory and unjustified treatment of Ee's problem and thereby comported with duty of fair representation)

Cowlitz Studd Company **JD-(SF)-141-80**
(U which successfully obtained Ee's discharge because E had violated contract provision when it hired him did not violate act when it refused to process grievance on Ee's behalf which sought his reinstatement)

Vulcan Fuel Corporation **JD-842-79**
(refusal of U to process grievance because Ee had filed charge against U, violative)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**
(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-6700 Basis for union action or failure to act

2581-6733 Permissible considerations

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**
(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-6733-2500 Contract

Cowlitz Studd Company **JD-(SF)-141-80**
(U's action in seeking removal of new Ee not violative where Ee was hired in abrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

2581-6733-5000 Good-faith evaluation of merits of grievance

San Francisco Web Pressmen and Platemakers' Union No. 4 (San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency) **249 NLRB No. 023**
(U's failure to carry grievance to arbitration stage of procedure not breach of duty where U conducted investigation and determined to its satisfaction that E's exertions were true; moreover it need not obtain explanation from grievant as Bd has not established that as requirement)

2581-6767 Irrelevant or invidious considerations

2581-6767-5000 Nonmembership in union of unit employee

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(U steward's statement to Ee that if he did not obtain U permit other Ees would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as no evidence that U sought to involve E)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(revocation by U local's president of general president's approval of temporary assignment of Ee-prominent member of rival U-resulting in Ee taking leave w/o pay, unlawful, since revocation not to maintain contract requirement of Ee's assent to working outside his regular schedule where request was for personal reasons and revocation based on personal views of U

2581-6767-5000—Cont.

official, notwithstanding request not signed by steward and exceeded 30 day limit on schedule changes, where general president had apparent authority to approve request, and 30 day limit was personal policy of president of division)

2581-6767-7500 Intraunion activity

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(U's imposition of discipline on Ees violative where true motive was to retaliate for their activities, against U leadership and for filing charges with Bd)

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9)**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

2581-6767-7600 Delinquency in dues or other monies owed to union

International Longshoremen's Association, Local 1414 **JD-357-80**
(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

2581-6767-7800 Failure to follow union rules or procedures

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(removal of Ee's name from hiring hall's *out-of-work* list precluding Ee from being dispatched in manner prescribed by contractual rules held violative where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

2581-6767-8700 Recourse to the NLRB

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(U's imposition of discipline on Ees violative where true motive was to retaliate for their activities, against U leadership and for filing charges with Bd)

Steelworkers, Local No. 3029 (Gardner-Denver Company) **250 NLRB No. 114**
(U president's response to inquiry of member on status of grievance in which he told member that he didn't think U should do anything for him since he had filed charge against U with Bd violative as threat to refuse to continue to represent him)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Construction Teamsters Local 216, IBT **JD-(SF)-202-80**
(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities against E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

Vulcan Fuel Corporation **JD-842-79**
(refusal of U to process grievance because Ee had filed charge against U, violative)

2590 INTERFERENCE WITH BOARD PROCEEDINGS

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

2595 INTERFERENCE WITH ACCESS TO BOARD

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's conditioning of threats of discipline, including use of fines, on whether or not members maintained or withdrew decertification ptn, unlawful)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's threat to bring member before U's executive board in reaction to member's use of Bd's decertification processes construed, in light of prior threats of fine and expulsion, to include intention on U agent's part to seek both fines and expulsion for member's action; while threat to expel member for filing decertification ptn is not violative, threat to fine person seeking access to Bd is, and agent's invoking of both expulsion and fines held unlawful)

2599 OTHER FORMS OF COERCIVE CONDUCT

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(pickets' recording or appearing to copy license plate numbers of Ees who crossed or sought to cross U's picket line, violative in view of accompanying unlawful acts, including threats of violence against Ees because of their refusal to join strike)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(where striking Ees' acts and threats of violence accompany their photographing of non-striking Ees as they left and entered plant were neither attributable nor alleged to be attributable to U, ALJ declined, contrary to GC's contention, to rely upon such acts and threats of violence in evaluating lawfulness of the photographing)

5000 UNION RULES PROVISO

5025 SCOPE OF EXEMPTION

5025-3300 Rules respecting acquisition or retention of membership

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

Machinists, Lodge 727 (Lockheed-California Company, A Division of Lockheed Corporation) **250 NLRB No. 032**
(U's refusal to give effect to member's resignation violative where member willing to meet financial core membership obligation, no provision in U's constitution which restrains membership resignation, and effect of membership is to deprive member from accepting employment wherever U is involved in strike as such conduct prohibited by constitution)

5025-6700 Rules governing conduct of members

Transport Workers Union of America, Local 514 (Kothe, Nichols

5025-8300 Rules governing internal procedures

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**
(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

5025-8350 Cannot be prescribed to change employer hiring policy or affect employment status

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**
(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership

5025-8350—Cont.

when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

5050 EMPLOYEE CONDUCT REGULATED BY RULES

5050-3300 Regulation within proviso

5050-3350 Prohibition against crossing picket line

5050-3350-2500 Primary picket lines

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**
(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

5050-3375 Prohibition against filing decertification or representation petition

Transport Workers Union of America, Local 514 (Kothe, Nichols

5050-3385 Violation of hiring hall procedure

General Truck Drivers, Warehousemen

5050-6700 Regulation not within proviso

5050-6767 Requiring employees to sign dues checkoff authorizations

Siro Security Service, Inc. **247 NLRB No. 157**
(U demanding discharge of Ee who opposed U as bargaining representative and objected to deduction of U dues w/o his consent, unlawful)

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

5075 ENFORCEMENT OF RULES WITHIN PROVISO

5075-0100 Generally

5075-0125 May not be enforced through employment relationship

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**
(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

5075-0150 Membership status of employees at time of conduct

American Nurses' Association **250 NLRB No. 175**
(U's fines of members for crossing picket lines enforceable where, contrary to contention, Ees were members of U as they paid initiation fees and monthly dues, participated in U activities, accepted U benefits and some of Ees U had attempted to resign from U)

5075-0150-5000 Unenforceable if done for conduct engaged in subsequent to resignation

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(Us which summoned former members to appear before their executive boards for conduct (returning to work during strike) occurring after their effective resignations violative)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**
(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

5075-0150-8700 Resignation effective when received

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

5075-5000 Forms of enforcement

5075-5017 Fine

5075-5017-0100 Generally

General Truck Drivers, Warehousemen

General Truck Drivers, Warehousemen

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**
(where U and E entered into strike settlement agreement containing *amnesty* clause and U filed charges and imposed fines against members for strike breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

5075-5017-5000 Reasonableness of amount not relevant

Local Union No. 965, Operating Engineers (Elcon Pepeliners, Inc.) **247 NLRB No. 029**
(however, excessiveness or severity of such fine may nevertheless be considered in ascertaining motive, reason, and purpose for fine)

5075-5017-6700 Unenforceable as sanction against member for filing or circulating decertification, deauthorization or representation petition

Transport Workers Union of America, Local 514 (Kothe, Nichols

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**

5075-5017-7200 Unenforceable as sanction against member for supporting rival union

Local Union No. 965, Operating Engineers (Elcon Pipeliners, Inc.) **247 NLRB No. 029**
(U fining member $1,000 for *failing to appear before Executive Board meeting to explain your actions while working at (E)*, violative, where *actions* were protected activities of expressing dissatisfaction at U's hiring hall practices and signing authorization card for another U; particularly where Charging Party was only member on whom fine of such large amount had been imposed and U's president had threatened him with loss of job when he affiliated with another U)

5075-5017-7500 Refusal to honor picket line

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike. and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

5075-5025 Filing intra-union charges

Transport Workers Union of America, Local 514 (Kothe, Nichols

United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1989 (Caterpillar Tractor Company) **249 NLRB No. 123**
(Institution of internal U disciplinary proceeding against some members, selecting trial committee, and issuing formal notice of hearing on these

5075-5025—Cont.

charges because these Ee-members had appeared as witnesses and testified adversely to U's grievance in arbitration hearing held pursuant to provisions of collective-bargaining agreement, violative, notwithstanding charges were later withdrawn since Respondent took no specific action to repudiate coercive effect of its conduct)

General Truck Drivers, Warehousemen

Sachs Electric Company **248 NLRB No. 092**
(U's threat to file internal U charges against U members, and filing of such charges against one of them, because they had protested and sought to vindicate their right to sign referral list at U's hiring hall, unlawful)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**
(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

5075-5033 Expulsion

5075-5033-3300 Refusal to honor picket line

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(Us which summoned former members to appear before their executive boards for conduct (returning to work during strike) occurring after their effective resignations violative)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

5075-5033-5000 Enforceable as sanction against member for filing decertification or representation petition

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**

5075-5050 Threats

Sachs Electric Company **248 NLRB No. 092**
(U's threat to file internal U charges against U members, and filing of such charges against one of them, because they had protested and sought to vindicate their right to sign referral list at U's hiring hall, unlawful)

5075-5050-0100 Generally

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

5075-5076 Removal from job

Siro Security Service, Inc. **247 NLRB No. 157**

5085 PROHIBITION AGAINST EMPLOYEES' USE OF UNION BULLETIN BOARD

Teamsters Local 515 (Roadway Express, Inc.) **248 NLRB No. 020**
(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

542 UNION COERCION OF EMPLOYER IN SELECTION OF REPRESENTATIVES

0100 GENERALLY

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**

0125 SCOPE OF PRESCRIPTION

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

(absent an apparent and immediate threat to Ee safety which might justify a work stoppage or other action either under Sec. 502 of Act or as a matter of general equity, a U, whatever its motivation, cannot by restraint and coercion force E to select or remove its representative for purposes of collective bargaining or adjustment of grievances)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

0125-9000 Preserves employer's right to select representative

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**

(placing supervisor, who had been lawfully suspended from membership year ago for nonpayment of dues, on list of members suspended and only other name on list was supervisor suspended for working behind picket line, violative, since placement of former on list created impression he, too, was suspended for refusing to honor picket line and thereby interfering with ability of E to obtain supervisors from among U members)

3300 FORMS OF RESTRAINT OR COERCION AND THREATS THEREOF

3333 ON EMPLOYER

3333-1700 Strike or work stoppage

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors,* 559 F.2d 222)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

3333-3300 Picketing

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

3333-5000 Physical violence

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

3333-7500 Requesting discharge or replacements

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection of his representative for purposes of collective bargaining or adjustment of grievances)

3367 ON REPRESENTATIVE

3367-0100 Generally

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**

(where supervisor-member's ownership interest in E was only 4 percent, U was not free to fine the supervisor-member since supervisor-member's interest was not so substantial as to make him an E)

3367-6700 Internal union discipline to enforce adherence to union authority

3367-6701 Generally

3367-6701-5000 Discipline for performing nonsupervisory work during work stoppage

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**

(suspension of 2 supervisors for performing rank-and-file work during strike violative where neither supervisor performed sufficient rank and file work to remove them from Act's protection)

3367-6701-5033 Substantiality of work performed

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**

(U business manager's preferring charges against supervisor-member of U for crossing picket line and performing bargaining unit work during strike, violative, where supervisor-member spent only minimal amount of time performing the work)

3367-6701-5067 Nature of work performed

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**

(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB 908 (1974),* distinguished)

3367-6708 Summoning representative to appear before union executive board

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**

3367-6717 Disciplinary charges

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**

(U's conduct in bringing charges against supervisor who was E's representative for purpose of resolving grievances, subjecting him to trials, and fining

3367-6717—Cont.

him on one charge for violating U's constitution, unlawful; to hold otherwise would permit U to ensure contracts would be interpreted as it sees fit by, first, seeking arbitration of grievances which could not be resolved and, second, ensuring that no disputes arise by pressuring supervisors by means of internal discipline, thereby inhibiting supervisor from disagreeing with U's interpretation of contract and working conditions)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(violation where U tried and fined supervisor-member for crossing picket line and performing unit work during strike; supervisor-member spent only minimal amount of time performing work)

3367-6750 Fines

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB 908 (1974)*, distinguished)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony*, violative, where *his decisive role* and *written testimony* were what he did in his supervisory capacity)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U's fining supervisor-member for failing to perform scheduled picket duty during strike against E, violative, since supervisor-member was E's only Section 8(b)(1)(B) representative and his compliance with U's order would have deprived E of supervisor-member's services as job superintendent)

3367-6767 Suspension

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(suspension of 2 supervisors for performing rank-and-file work during strike violative where neither supervisor performed sufficient rank and file work to remove them from Act's protection)

3367-6799 Other disciplinary action

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(violation where local's president removed U member from golf team for reason that as supervisor he had issued disciplinary notice to rank-and-file member of U)

6700 REPRESENTATIVES AFFECTED

6725 FOR COLLECTIVE BARGAINING

6725-3300 Employer association

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

6725-5000 Employer's bargaining agent

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(supervisor found sufficiently involved in negotiating process to be protected by Act where his job was to instruct principal negotiators of effect of various proposals)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection of his representative for purposes of collective bargaining or adjustment of grievances)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that charging party, E's bargaining representative, was equitably barred in instant 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since *clean hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

6750 FOR ADJUSTMENT OF GRIEVANCES

6750-3300 Supervisors

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection of his representative for purposes of collective bargaining or adjustment of grievances)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(violation where local's president removed U member from golf team for reason that as supervisor he had issued disciplinary notice to rank-and-file member of U)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony*, violative, where *his decisive role* and *written testimony* were what he did in his supervisory capacity)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**
(U's conduct in bringing charges against supervisor who was E's representative for purpose of resolving grievances, subjecting him to trials, and fining him on one charge for violating U's constitution, unlawful, to hold otherwise would permit U to ensure contracts would be interpreted as it sees fit by, first, seeking arbitration of grievances which could not be resolved and, second, ensuring that no disputes arise by pressuring supervisors by means of internal discipline, thereby inhibiting supervisor from disagreeing with U's interpretation of contract and working conditions)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U's fining supervisor-member for failing to perform scheduled picket duty during strike against E, violative, since supervisor-member was E's only Section 8(b)(1)(B) representative and his compliance with U's order would have deprived E of supervisor-member's services as job superintendent)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U business manager's preferring charges against supervisor-member of U for crossing picket line and performing bargaining unit work during strike, violative, where supervisor-member spent only minimal amount of time performing the work)

6775 POTENTIAL REPRESENTATIVES

6775-0100 Generally

6775-0150 Future representative resources of employer entitled to protection

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**

6775-0150—Cont.

(placing supervisor, who had been lawfully suspended from membership year ago for nonpayment of dues, on list of members suspended and only other name on list was supervisor suspended for working behind picket line, violative, since placement of former on list created impression he, too, was suspended for refusing to honor picket line and thereby interfering with ability of E to obtain supervisors from among U members)

6787 FUND TRUSTEES

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

7500 REPRESENTATIVE'S ACTION FOR WHICH DISCIPLINED

7533 PERFORMANCE OF RANK-AND-FILE WORK

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB 908 (1974)*, distinguished)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(violation where U tried and fined supervisor-member for crossing picket line and performing unit work during strike; supervisor-member spent only minimal amount of time performing work)

7567 PERFORMANCE OF SUPERVISORY DUTIES

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony*, violative, where *his decisive role* and *written testimony* were what he did in his supervisory capacity)

548 UNION CAUSATION OF EMPLOYER DISCRIMINATION

0100 GENERALLY

0125 NATURE AND SCOPE OF PROSCRIPTION

0125-7000 Specific proof of intent not required where conduct inherently destructive of employee rights

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

(specific evidence of intent to encourage U membership not essential; *U violates 8(b)(1)(A) and (2) of Act if it or its agent adversely affects Ee's job for purely personal or arbitrary reasons*)

0125-7500 Not every form of interference prohibited though tending to encourage membership

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**

(in same way that E, unmotivated by intent to discourage U membership, may make decisions having foreseeable effect of discouraging U membership, so also may U make decisions reasonably calculated to further welfare of all Ees it represents, non-U as well as U, even though foreseeable result of decision may be to encourage U membership)

0150 FINDING OF 8(a)(3) VIOLATION NOT PREREQUISITE TO 8(b)(2) FINDING

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

(finding of violation of 8(b)(2) of Act by U's causing E to alter working conditions for arbitrary reasons does not mandate finding per se violation of 8(a)(3) by E)

2000 FORMS OF PRESSURE

2075 COURT ACTION OR ARBITRATION

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**

(U filing Section 301 suit to compel arbitration of grievance alleging that E had misclassified Ee who had crossed picket line at higher grade than that for which he qualified, unlawful, since suit was in pursuit of unlawful objective where filing of grievance was in retaliation for crossing picket line rather for protection of wage structure)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**

(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....*scab*)

2091 PICKETING

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**

(U's picketing of E not violative where not for recognitional purposes and evidence does not establish that U does not have majority support)

4000 MEANS OF ATTEMPTING TO CAUSE DISCRIMINATION

4001 GENERALLY

4001-5000 Where illegal agreement or practice exists

Eldorado Manufacturing Corporation **249 NLRB No. 088**

(no express demand by U steward for discharge of Ees was required, since steward's threat to quit if Ees, who were antagonistic to him, were not discharged was sufficient)

4020 EXECUTION OR MAINTENANCE OF AGREEMENTS CONTAINING ILLEGAL PROVISIONS

4020-4000 Union membership requirements

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**

(execution of contract containing U-security clause when U did not represent uncoerced majority of Ees, violative, notwithstanding subsequent deletion of such clause)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

(enforcement of agreement with security clause where U did not have majority, unlawful)

Baine Service Systems, Inc. **248 NLRB No. 087**

(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

Actors' Equity Association **247 NLRB No. 172**

(U's maintenance of disparate dues requirement for non-resident aliens, in conjunction with its U security agreements, held not per se unlawful; however, such disparate dues structure is presumptively invalid since discrimination based on alienage is inherently suspect, and burden is on those seeking to justify it to show that reasons for such discrimination overcome policy against it)

4080 DEMAND FOR DISCRIMINATORY TREATMENT (SEE 548-6000)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**

(although maintaining integrity of U's established trademark which has purpose of promoting employment of U members under U conditions is protected, withholding U seal for unlawful objectives is not privileged)

6000 MEANS OF CAUSING OR ATTEMPTING TO CAUSE DISCRIMINATION

6001 GENERALLY

6001-1200 'Causal' link between union and employer's action

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**

(causing termination of Ee, suspended from local, from film crew because of U's threats to withhold U seal from finished film, violative, where E would have retained Ee irrespective of his lack of membership in local had not U threatened retaliatory action)

6001-1250 In absence of specific demand upon employer

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**

(U steward's statement to Ee that if he did not obtain U permit other Ees would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as no evidence that U sought to involve E)

6001-6200 Employer knowledge of union motive

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

6010 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT ENTERED INTO BY MINORITY UNION

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

(enforcement of agreement with security clause where U did not have majority, unlawful)

6015 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT ENTERED INTO BY ASSISTED UNION

6015—Cont.

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E and assisted U's inclusion of U security provision in their agreement, not unlawful, notwithstanding agreement itself was unlawful because U lacked majority status at time of execution, where there was no proof that the provision was ever enforced or any Ee discriminated against by its application)

6030 HIRING AND EMPLOYMENT AGREEMENTS AND PRACTICES

6030-0100 Generally

Plumbers, Local Union No. 577 (Catalytic, Inc. and Pullman, Inc.) **JD-221-80**
(exclusive referral system established by fact that Es under contract with U are obliged to, and in practice, do obtain all Ees of plumbing and pipefitting craft by referral from or clearance with U)

6030-3300 Illegal provisions or arrangements

6030-3320 In referral

Local Union 633, Plumbers (B

Local Union 633, Plumbers (B

Local Union 633, Plumbers (B

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U which charged Ees monthly referral fee for participation in its hiring hall violated Act where it never effectively operated referral hall and purpose of fee was to make money for U)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, nor does use of subjective criteria in referral such as financial need necessarily reflect discriminatory motive and violative per se, provided such criteria subordinated to overall established objective system)

Plumbers, Local Union No. 577 (Catalytic, Inc. and Pullman, Inc.) **JD-221-80**
(even if nonmember had visited U's hiring hall to seek referral to job with specific E, U did not unlawfully refuse to give him such referral where at time in question U made no referrals to E at which nonmember sought employment and, in any event, he would not have been eligible for referral since he retained his employment with another E)

6030-3330 Preference to union members and/or members of local

International Photographers of the Motion Picture Industry, Local 659, et al.(Medway Productions, Inc.) **250 NLRB No. 052**
(U violated 8(b)(2) and 1(A) where under its preferential hiring agreement requiring new hires to have previous work experience with an E signatory to U contract, it refused to clear qualified applicants for employment as cameramen because they lacked U membership)

6030-3360 In continued employment

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(causing E to select for layoff Ees identified as supporters in U election of U member running against incumbent U official for latter's office, unlawful)

6030-3390 Coercing employer to discriminate in employment

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(causing E to select for layoff Ees identified as supporters in U election of U member running against incumbent U official for latter's office, unlawful)

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(U's conduct in causing discharge of Ees, and E's discharge of Ees at U's request, unlawful, where U steward in requesting discharges was motivated by harassment flowing from Ees' continual accusation of steward's failure to adequately perform his steward's duties, their insistence on prompt grievance meetings, and attempt to unseat him as steward; moreover, even if no intraunion retaliation motivated steward in demanding discharges, but only that personal harassment was no longer bearable, U's demands for discharges would nevertheless be unlawful)

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(attempting to cause and causing E to post Ee's job for bids, with clearly foreseeable result that she would be laid off because of initiating grievance proceedings, unlawful)

6030-6700 Discrimination in application of valid provisions and agreeements

6030-6701 Generally

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, not does use of subjective criteria in referral such as financial need necessarily reflect discriminatory motive and violative per se, provided such criteria subordinated to overall established objective system)

6030-6712 In registration for referral

Sachs Electric Company **248 NLRB No. 092**
(refusal by U administering hiring hall under exclusive referral agreement to permit members of sister Us to sign referral list, unlawful)

6030-6725 In referral

6030-6725-0800 Requiring non-members to pay referral fees not reasonably related to services

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**
(requirement that nonmembers pay fee to help support operation of exclusive hiring hall, unlawful where U actually operated referral system for members only; whether or not U actually operated exclusive hiring hall, rather than whether or not contract permitted it do so, was determining factor)

6030-6725-1200 Requiring referral fees not reasonably related to operation of hiring hall

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**

6030-6725-1700 Preference to union members

Local Union 633, Plumbers (B

6030-6725-2500 Priority based on service with employer

Local Union 633, Plumbers (B

6030-6725-4200 Refusal to refer because of nonmembership

Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) **248 NLRB No. 174**

6030-6725-4300 Refusal to refer because of collective bargaining agreement

Local 873, Electrical Workers (Kokomo-Marian Division, Central Indiana Chapter, National Electrical Contractors Association, Inc.) **250 NLRB No. 113**
(refusal to refer U member who was rightfully terminated from apprenticeship program not violative where collective-bargaining agreement provided that only journeyman or participants in training program could be referred. thus, presumption that U's action of refusing to refer U member will tend to coerce other members as a display of U power rebutted)

6030-6725-5000 Refusal to refer because of opposition to union leadership

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(refusal to refer members because of their opposition to U officials violative)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(expelling and suspending disident members violative where result was denial of employment since all hiring was done through U hiring facilities)

Carpenters and Joiners, Local No. 1914 (W

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

6030-6725-5700 Refusal to refer because of criticism of referral system

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(refusal to refer members who protested hiring hall operation policies (particularly selection methods employed by U officials operating hall) at U meetings, to local and International, to NLRB and other government agencies)

6030-6750 In selection for hiring or work on job

General Truck Drivers, Warehousemen

6030-6762 In conditions of employments

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where during period there was in effect U's unlawful order to approve no requests for change in schedule--because of pending ULP charge against it alleging discriminatory refusal of such request--U disapproved Ees' request for changes in schedule pursuant to said order)

6030-6762-5000 **Seniority position**

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's experience)

6030-6762-5075 Shift

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(revocation by U local's president of general president's approval of temporary assignment of Ee-prominent member of rival U-resulting in Ee taking leave w/o pay, unlawful, since revocation not to maintain contract requirement of Ee's assent to working outside his regular schedule where request was for personal reasons and revocation based on personal views of U official, notwithstanding request not signed by steward and exceeded 30 day limit on schedule changes, where general president had apparent authority to approve request, and 30 day limit was personal policy of president of division)

6030-6775 In continued employment

General Truck Drivers, Warehousemen

Peoria Newspaper Guild, Local 86 (Peoria Journal Star) **248 NLRB No. 028**
(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

Moser Brothers Welding, Inc. **JD-(NY)-38-80**
(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's attempt to cause lay off of Ee who was leader in decertification campaign, unlawful, where, after threatending to *have* Ee's job, agent telephoned E in attempt to cause E to lay off Ee who had knowledge of incident, and unlawful motive was evident from agent's hostility towards Ee's leadership in decertification campaign; moreover, GC met his prima facie burden of proof thru parties' stipulation, and there was no evidence to satisfy U's rebuttal burden)

Cowlitz Studd Company **JD-(SF)-141-80**
(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9)**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E, U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

6030-6787 In processing grievances

Detroit Diesel Allison Division, General Motors Corporation **249 NLRB No. 089**
(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

Cowlitz Studd Company **JD-(SF)-141-80**
(U which successfully obtained Ee's discharge because E had violated contract provision when it hired him did not violate act when it refused to process grievance on Ee's behalf which sought his reinstatement)

6040 ENFORCEMENT OF UNION MEMBERSHIP REQUIREMENT

6040-5000 **Discriminatory application of valid requirement**

6040-5050 For reasons other than failure to tender dues or initiation fees

Actors' Equity Association **247 NLRB No. 172**
(U's maintenance and enforcement of U security requirement that nonresident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from other members, unlawful; U's defenses to presumptive invalidity of such disparate requirement rejected, since U failed to establish any present or recent purpose for maintaining such dues other than its effectiveness in producing revenues)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

6040-7500 **Maintenance-of-membership requirements**

6040-7550 Resignation during contract hiatus

Peoria Newspaper Guild, Local 86 (Peoria Journal Star) **248 NLRB No. 028**
(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

6050 ENFORCEMENT OF DUES AND INITIATION FEE REQUIREMENTS

6050-3300 **Illegal provisions or requirements**

6050-3375 Payment through dues checkoff required

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

6050-3387 Requiring payment of excessive and/or discriminatory initiation fees

Actors' Equity Association **247 NLRB No. 172**
(U's maintenance and enforcement of U security requirement that nonresident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from other members, unlawful; U's defenses to presumptive invalidity of such disparate requirement rejected, since U failed to establish any present or recent purpose for maintaining such dues other than its effectiveness in producing revenues)

6050-6700 **Discriminatory application of valid requirements**

6050-6701 Generally

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**
(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

6050-6701-5000 **Union obligation to inform employees of dues requirements**

Local 1445, United Food and Commercial Workers (Gallahue's Supermarkets) **247 NLRB No. 151**

6050-6701-5000—Cont.

(U demanding discharge of Ees who had not paid U dues or executed checkoff authorizations as required by U security and checkoff agreements before U had advised Ees of their obligation under provisions, notwithstanding almost one half of Ees attended meeting at which agreement ratified)

6050-6767 Failure to inform member of obligation

Local 572, Teamsters (Ralphs Grocery Company) **247 NLRB No. 108**
(U's seeking and causing discharge of Ee for failing to pay dues pursuant to U-security agreement, unlawful, where U did not give Ee sufficient prior notice of her delinquency, and during Ee's conversation in U office she was not given correct amount nor reasonable opportunity to satisfy her obligation before her termination)

Local 1445, United Food and Commercial Workers (Gallahue's Supermarkets) **247 NLRB No. 151**
(U demanding discharge of Ees who had not paid U dues or executed checkoff authorizations as required by U security and checkoff agreements before U had advised Ees of their obligation under provisions, notwithstanding almost one half of Ees attended meeting at which agreement ratified)

6060 ENFORCEMENT OF SENIORITY AGREEMENTS AND PRACTICES

6060-0100 **Generally**

General Truck Drivers, Warehousemen

6060-0150 Union actions may not be based on irrelevant or invidious considerations

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....*scab*)

6060-5000 **Enforcement of discriminatory seniority rules**

6060-5050 Superseniority

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

6060-7500 **Retention and accumulation of seniority while outside unit**

Sign, Pictorial

6075 ENFORCEMENT OF DISCRIMINATION IN TERMS OR CONDITIONS OF EMPLOYMENT

Detroit Diesel Allison Division, General Motors Corporation **249 NLRB No. 089**
(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(violation where local U's agent caused E to discharge steward for latter's failure to support business agent in U election)

6090 DISCRIMINATORY ADMINISTRATION OF INSURANCE, PENSION, AND OTHER BENEFIT PLANS

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(Bd properly dismissed complaint alleging that maintenance and enforcement of cancellation provisions of pension plan unlawfully coerced Ees in exercise of right to vote to decertify U as Ee representative in that automatic cancellation rules effectively dictated Ees' choice to vote for continued representation by U; there was no evidence in the record or from the provisions themselves of intention to violate Act; provisions, on their face and as here applied, were not discriminatory or coercive; and their impact on Ee voting rights was indirect and served a legitimate business purpose of pension fund)

8000 AFFIRMATIVE DEFENSES

8015 ACTING IN DEROGATION OF BARGAINING REPRESENTATIVE

Moser Brothers Welding, Inc. **JD-(NY)-38-80**
(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

8020 COMPLIANCE WITH CONTRACT

General Truck Drivers, Warehousemen

554 UNION OBLIGATION TO BARGAIN

0100 GENERALLY

1400 NATURE AND EXTENT OF OBLIGATION AND DUTY TO BARGAIN

1433 MECHANICS OF BARGAINING

1433-6700 Impasse

1433-6725 What constitutes

Local 1115, Joint Board, Nursing Home

Local 1115, Joint Board, Nursing Home

1433-9100 Ratification by employees

Local Union No. 381, Teamsters (Federal Electric Corporation) **JD-(SF)-296-79**

(valid ratification of contract where two-thirds of Ees failed to vote against ratification as required by constitution, notwithstanding votes necessary for rejection obtained when combined with second ratification vote held only for Ees who had not previously voted, since first vote determinative; U's contentions that it is for it to determine if ratification has taken place and that ratification tainted by E's interferance, rejected)

1450 SUBJECT MATTER OF BARGAINING

1450-0100 Generally

1450-0120 Mandatory subjects defined

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

1450-0800 Scope and work of unit

1450-0875 Composition of unit

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's bargaining to impasse on clause that would require E, during term of contract, to agree to same contract terms for any of its other plants whose Ees selected U to bargain for them, violative, where U clause was to apply to both plants in operation at time contract was signed and plants acquired and put into production during term of contract; scope of certified bargaining unit is not mandatory subject)

1450-1600 Remuneration and benefits

1450-1660 Pensions and group insurance

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**

(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

1450-7000 Matters relating to nonunit employees

Operating Engineers, Local Union No. 12; et al. (Maas

1450-7700 Trust fund provisions

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors,* 559 F.2d 222)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

1467 ACTS CONSTITUTING REFUSAL TO BARGAIN OR INDICATING BAD FAITH

1467-0100 Generally

1467-0155 Effect of arbitration award

Local 1115, Joint Board, Nursing Home

1467-0300 Withholding information or giving misleading information

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**

(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

Abestos Workers, Local No. 80 (West Virginia Master Insulators Association) **248 NLRB No. 022**

(U's refusal to furnish information requested by E association relating to U's referral system, unlawful, since such information is clearly relevant and necessary for association to evaluate present referral practices under existing contract, to test validity of contract proposals, and to formulate future contract proposals or referrals; fact that parties were not engaged in contract negotiations is not determinative inasmuch as information regarding referrals is relevant to day-to-day administration of contract as well as to future contract negotiations)

1467-3000 Proposals and demands

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's offering proposal which would carry forward any agreement to which E was party and preserve prior agreements between U and various Es, not violative notwithstanding E's contention that such clause violates 8(b)(1)(B) because it requires E to accept as its bargaining representative persons representating other Es who negotiated or would negotiate changes in agreement to which E was not party; U did not bargain to impasse on proposed clause)

1467-3033 Illegal and/or unreasonable provisions

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective

1467-3033—Cont.

bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors,* 559 F.2d 222)

1467-3084 Pertaining to nonunit employees

Operating Engineers, Local Union No. 12; et al.
(Maas

1467-6000 **Uncompromising attitude or refusal to make concessions**

Local 1115, Joint Board, Nursing Home

1467-6600 **Commission of unfair labor practices**

1467-6684 Refusal to deal with employer's designated representative

Amax Coal Company, a Division of Amax, Inc. v.
N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's refusing to negotiate with E on individual basis, violative, notwithstanding U's claim that it believed E had designated E association as bargaining representative; E had plainly stated its intention to bargain separately with U and not to join association)

1467-7200 **Refusal to sign or reduce agreement to writing**

Nevada Resort Association; Summa Corporation, d/
b/a Castaways Hotel; et al. **250 NLRB No. 118**

(U's refusal to sign contract upon which parties had orally agreed as to all terms except lounge musicians' status, unlawful; after multi-E association had unlawfully refused to continue to include lounge musicians in contract with house musicians, at U's suggestion parties had continued to negotiate and reached agreement on all other terms)

1467-7800 **Actions to compel contract modification**

Local Union No. 381, Teamsters (Federal Electric
Corporation) **JD-(SF)-296-79**

(U's repudiation of contract and threatening to strike to force E to negotiate new contract, unlawful, notwithstanding U's contention no valid ratification of contract where votes necessary for rejection obtained by combining votes in second ratification vote held for those who had not previously voted with votes cast in first ratification vote, since first vote alone determinative)

1467-8700 **Actions nullifying contractual arbitration proceedings**

United Automobile, Aerospace and Agricultural
Implement Workers of America, Local No.
1989 (Caterpillar Tractor Company) **249 NLRB No. 123**

(Institution of internal U discipline against members who testified against Respondent's position in grievance procedure violative as this destroys integrity of arbitration clause in contract)

1467-9600 **General refusal to bargain**

1467-9650 Totality of conduct

Local 1115, Joint Board, Nursing Home

1475 DUTY TO FURNISH INFORMATION

National Union of Hospital and Health Care
Employees, Division of RWDSU, AFL-CIO; et
al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**

(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

Abestos Workers, Local No. 80 (West Virginia
Master Insulators Association) **248 NLRB No. 022**

(U's refusal to furnish information requested by E association relating to U's referral system, unlawful, since such information is clearly relevant and necessary for association to evaluate present referral practices under existing contract, to test validity of contract proposals, and to formulate future contract proposals or referrals; fact that parties were not engaged in contract negotiations is not determinative inasmuch as information regarding referrals is relevant to day-to-day administration of contract as well as to future contract negotiations)

1483 REQUIREMENTS FOR TERMINATION OR MODIFICATION OF CONTRACTS - 8(d) PROVISO

1483-2000 **Notice requirements**

1483-2001 Generally

1483-2001-5000 **Actual notice required**

Amax Coal Company, a Division of Amax, Inc. v.
N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's failure to give FMCS notice of existence of dispute, violative even if, as contended by U, FMCS independently obtained *actual knowledge* of dispute from other sources; purpose of Sec. 8(d)(3) is not fulfilled when FMCS happens to find out about a dispute on its own)

1483-2067 Thirty-day notice to mediation services

1483-2067-2500 **Adequacy of service**

Amax Coal Company, a Division of Amax, Inc. v.
N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's failure to give FMCS notice of existence of dispute, violative even if, as contended by U, FMCS independently obtained *actual knowledge* of dispute from other sources; purpose of Sec. 8(d)(3) is not fulfilled when FMCS happens to find out about a dispute on its own)

2800 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF UNION

4200 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYER

5600 MULTI-EMPLOYER BARGAINING

7000 MULTI-UNION BARGAINING

8400 AFFIRMATIVE DEFENSES

560 PROHIBITED STRIKES AND BOYCOTTS

0100 GENERALLY

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

2500 CONDUCT PROHIBITED WHEN FOR PROHIBITED OBJECT

2550 INDUCEMENT OR ENCOURAGEMENT OF - (i)

2550-6700 To refuse to perform services

Carpenters Local 316 (E **Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) JD-61-80**

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

2550-8300 Forms of inducement or encouragement

2550-8333 Picketing

Truck Drivers, Chauffeurs **Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) JD-61-80**

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

2550-8384 Statements

Carpenters Local 316 (E

2575 THREATENING, COERCION, OR RESTRAINT OF - (ii)

2575-6700 Forms of threats, restraint, or coercion

2575-6701 Generally

Local 40, Ironworkers (Spancrete Northeast, Inc. **249 NLRB No. 112**

(fact that E's representatives were not present at meeting between competing U and representatives of contracting entity does not change violative nature of Respondent U's threat to strike E because such threat unlawfully coerces not only person threatened but also E from whom work assignment is sought)

2575-6725 Statements to employees of secondary

Truck Drivers, Chauffeurs

Carpenters Local 316 (E

2575-6737 Imposition of monetary penalties

Truck Drivers, Chauffeurs

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically performed by U and U had no prescriptive right to perform it)

2575-6750 Appeals to honor picket line

Carpenters Local 316 (E

2575-6767 Picketing

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Pipefitters Local Union No. 120 (Huge Heating

2575-6779 Violence

Truck Drivers, Chauffeurs

2575-6784 Statements

Local 40, Ironworkers (Spancrete Northeast, Inc. **249 NLRB No. 112**

(fact that E's representatives were not present at meeting between competing U and representatives of contracting entity does not change violative nature of Respondent U's threat to strike E because such threat unlawfully coerces not only person threatened but also E from whom work assignment is sought)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

5000 CONDUCT EXEMPTED FROM PROHIBITION

7500 PROHIBITED OBJECTS OF PROHIBITED CONDUCT

7501 GENERALLY

7501-5000 'An' object only required

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

7520 CLAUSE 8(b)(4)(A) - FORCING OR REQUIRING

7520-2500 Joining of labor organization

7520-2533 By employer

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**

(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where there were no *unusual circumstances* that would have permitted E to withdraw from U association once negotiations began with U, since there was no impasse between association and U, and there was no dissolution of association)

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**

(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where formation of new organization by representatives from E associations participating in bargaining with U, including E association herein, did not extinguish latter association and make it different entity; new organization was committee of convenience by which participating E associations tried unsuccessfully to coordinate their bargaining efforts, and

7520-2533—Cont.

Es' forms authorizing new organization to bargain for them did not create new association)

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**
(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where E failed to give notice of withdrawal from E association before bargaining began and, while U took no action against E to enforce agreement, it was not under any obligation to take such action; consequently, there was no U consent to E's non-participation and U had right to rely on E's continued participation in E assciation)

7520-2567 By self-employed person

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U threatening selfemployed dump truck owner-operator, an independent contractor, with loss of job at jobsite of construction contractor until he joined U, and insisting contractor c/d/b with independent contractors who were not and would not become members of U unlawful as it is secondary on its face)

7520-5000 **Joining of employer organization**

7520-5025 By employer

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

7520-5063 Employer action sought by union conduct

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(reasonable cause exists to believe U's activities violated 8(b)(4)(A) where U's contract, proffered to general contractor at construction site, violated 8(e) since *an object* of picketing inducements and coercion was to require contractor toenter into unlawful 8(e) agreement)

7520-5075 Indicia of objective

7520-5075-1200 **Picket signs**

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

7520-5075-6200 **Statements to employers**

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

7520-7500 **Entering into agreement prohibited by section 8(e)**

7520-7533 Agreements prohibited by section 8(e) (See 584-0000-0000-0000)

Teamsters, Local Union 222 (S.J. Groves

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(striking with object of forcing E to accept licensing-leasing out clause which forbids E from licensing out its operations absent compliance with contract terms by lincensee E's Ees violative)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(reasonable cause exists to believe U's activities violated 8(b)(4)(A) where U's contract, proffered to general contractor at construction site, violated 8(e) since *an object* of picketing inducements and coercion was to require contractor toenter into unlawful 8(e) agreement)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

7520-7583 Indicia of objective

7520-7583-6200 **Statements to employers**

Teamsters, Local Union 222 (S.J. Groves

7540 CLAUSE 8(b)(4)(B) - FORCING OR REQUIRING

7540-0100 **Generally**

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(Sec. 8(b)(4) as amended, *was enacted to prevent the widening of a labor dispute to entangle Es who had no concern with the original dispute*)

George Squillacote, RD v. Racine Building

7540-2000 **Any person to cease using products of any other producer**

7540-2040 What constitutes cessation of use or dealing

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**
(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

7540-4000 **Any person to cease doing business with any other person**

7540-4020 Any other person entitled to protection

7540-4020-2500 **Common ownership and control of primary and secondary firms**

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

7540-4020-5000 **Ally doctrine**

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**
(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, since Missouri branch was ally of New Jersey branch; since E had corporate policy of having struck work of branches performed by other branches, there is no need to prove actual performance of struck work before concluding that nonstruck branches are *acting as part of* E and are not *wholly unconcerned* with one branch's labor dispute)

7540-4020-5001 Generally

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

7540-4020-5001—Cont.

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

7540-4020-5033 Work performed that of employees of primary (struckwork)

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**
(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, where E had corporate policy of cross-shipping, whereby other branches perform work of struck branch, and E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

7540-4040 What constitutes cessation of business

7540-4040-7500 Cessation of business between neutrals

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**
(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

7540-4070 Employer action sought by union conduct

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**
(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

General Teamsters Union Local No. 170, a/w IBT (Claflin - Donohue) **(18JD-373-80**
(violation where U's business agents threatened E in automotive repair business that U would picket E if E did not cease working on vehicles of E with which U had dispute)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**
(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**
(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(U's picketing, questioning workers on site, or calling and writing letters to neutral subcontractors and owner of site had objective of inducing or encouraging such individuals to c/d/b with primary general contractor, and U's direct and indirectpressure on secondary parties had as its goal pressuring of primary E to agree to U's contract demands; consequently, reasonable cause exists to believe 8(b)(4)(B) was violated)

7540-4080 Indicia of objective

7540-4080-1200 Picket signs

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**
(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

7540-4080-6200 Statements to employers

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

General Teamsters Union Local No. 170, a/w IBT (Claflin - Donohue) **(18JD-373-80**
(violation where U's business agents threatened E in automotive repair business that U would picket E if E did not cease working on vehicles of E with which U had dispute)

Pipefitters Local Union No. 120 (Huge Heating

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**
(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**
(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 170 (C.A. 8, 1980)**
(telephone conversation between neutral E and U agent during which U agent, in response to E's question what it would take to get pickets to leave, answered removal of primary E, not unlawful; conversation was initiated by E, and picketing ceased shortly thereafter, w/o any other evidence of a secondary objective, of work stoppages, or of interrupted deliveries; moreover, neither party interpreted conversation as attempt to involve neutral E in dispute)

7540-6000 Any other employer to recognize or bargain with union as representative

7540-6017 'Any other employer' entitled to protection

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

7540-6083 Indicia of objective

7540-6083-6200 Statements to employers

Teamsters, Local Union 222 (S.J. Groves

7540-8000 Exemption of primary strike or picketing

7540-8001 Generally

7540-8001-3300 Primary activity defined

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

7540-8001-7500 Merger of primary's product with that of secondary

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(*Tree Fruits,* 377 U.S. 52 (1964) does not apply to cases in which retailer (neutral) sells only struck product (here, title insurance); when struck product had *so merged into (neutral) seller's total business as to be indistinguishable therefrom* boycott of struck product was illegal; interests of neutral secondary (E) must prevail)

7540-8020 Primary strikes or Inducements to Strike

7540-8020-5000 Primary objectives

7540-8020-5050 Unit work preservation

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**
(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must

7540-8020-5050—Cont.

show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(activities and agreements that seek not to preserve traditional work of displaced Ees but to acquire work of other Ees are unlawful under congressional proscription)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(to be classified as work preservation, boycott must be focused on *labor relations of contracting E vis-a-vis his own Ees*; boycott must not be *tactically calculated to satisfy U objectives elsewhere*; however, other Es and their Ees may be affected by the boycott but this is incidental effects of primary activity)

7540-8040 Primary picketing

7540-8040-3300 **Primary objectives**

7540-8040-3375 Struck work or product

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**

(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, where E had corporate policy of cross-shipping, whereby other branches perform work of struck branch, and E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

7540-8060 Common situs picketing

7540-8060-0100 **Generally**

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**

(general contractor's and project owner's going to primary subcontractor's construction site periodically each day merely to oversee work as it progressed in order to carry out functions as project coordinator and interested owner, held not being *present* at construction jobsite, notwithstanding that project owner had his storage van near project; his normal business was conducted at places other than construction sites)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**

(construction site not common situs and U's picketing subcontractor at the site not violative, in view of absence of Ees of any E other than primary subcontractor, and lack of reliable evidence that any neutral was present at time of picketing)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

7540-8060-0120 Moore Dry Dock criteria of primary activity

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**

(U not under obligation to comply with *Moore Dry Dock* guidelines absent evidence that site of U's picketing was a common situs)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**

(U's picketing at common situs is presumptively lawful if U limits its picketing to times when primary E's Ees are actually present, pickets reasonably close to primary E's workers and clearly names person with whom it has primary dispute, and if primary E's workers are engaged in the company's normal business)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**

(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

7540-8060-1700 **Picketing limited to times when situs of dispute located on common premises**

7540-8060-1717 Construction sites

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**

(construction site not common situs and U's picketing subcontractor at the site not violative, in view of absence of Ees of any E other than primary subcontractor, and lack of reliable evidence that any neutral was present at time of picketing)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company)
JD-61-80

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

7540-8060-3300 **Primary employer engaged in normal business at common situs**

7540-8060-3375 Work of secondary related to normal business of primary employer

Truck Drivers, Chauffeurs

7540-8060-5000 **Picketing limited to places reasonably close to location of common situs**

George Squillacote, RD v. Racine Building

7540-8060-5067 Availability of alternative places for picketing

Truck Drivers, Chauffeurs **Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company)**
JD-61-80

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

7540-8060-6700 **Picketing clearly discloses that dispute is with primary employer**

7540-8060-6717 Ambiguous, vague or misleading picket signs

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

7540-8060-6767 Picket signs naming employer, craft or product

Truck Drivers, Chauffeurs

7540-8070 Reserved gate picketing

7540-8070-0100 Generally

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

7540-8070-1700 Failure to use

Truck Drivers, Chauffeurs

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**
(breaches in reserved gate system)

Plumbers, Local 48 (Calvert General Contractors, Inc.) **249 NLRB No. 173**
(U's picketing of neutral Es' gate, unlawful where, although reserve gate system was knowingly breached on one occasion due to difficulty in making a delivery, neutral general contractor immediately acknowledged such error and subsequent delivery of material was made through proper reserve gate; moreover, even assuming that certain incidents contaminated neutral gate and general contractor subsequently *rehabilitated* reserve gate system, incidents were isolated occurrences and did not establish pattern of destruction of reserve gate system justifying resumption of picketing at neutral gates)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company)
JD-61-80
(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

7540-8070-3300 Adequacy of designation of reserved gate

Plumbers, Local 48 (Calvert General Contractors, Inc.) **249 NLRB No. 173**
(contention that reserved gate was not properly posted because it did not specifically mention that gate was to be used by primary E's suppliers, rejected, since omission of reference to such suppliers in posting of primary gate, w/o more, does not void reserved gate designation; moreover, result of posted signs was that primary E's suppliers clearly would be directed to reserved gate, there was no confusion which was attributable to signs, and primary Ees were diligent in obtaining compliance with reserved gate system)

Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 170 (C.A. 8, 1980)**
(picketing at construction site not unlawful, even though picketing continued at reserved gate, where gates had been improperly established, and there was evidence that gates had not been strictly observed even by president of company having dispute with U)

7560 CLAUSE 8(b)(4)(C) - FORCING OR REQUIRING

7560-8000 Indicia of objective

7560-8037 Time of picketing

Local 282, Teamsters (Mid-County Transit Mix, Inc.) **250 NLRB No. 076**
(violation where U picketed successor for recognition at time it knew predecessor E with which it had contract was out of business and that its only member-Ee who had worked for predecessor was now employed by successor E, who had recognized another U)

7580 CLAUSE 8(b)(4)D - FORCING OR REQUIRING

7580-4000 To assign particular work to particular employees rather than to other employees

7580-4001 Generally

7580-4001-3300 To employees in particular labor organization

Teamsters Local Union No. 170 (Massachusetts Laborers' District Council) **JD-39-80**
(violation where Bd awarded disputed work to Laborers in 10(k) proceeding and Teamsters continued to picket E for assigning such work to Laborers)

7580-4050 Employer action sought through union conduct

Plumbers, Local Union No. 412 (The Zia Company) **250 NLRB No. 137**
(violation of 8(b)(4)(i) and (ii)(D) where U induced and encouraged E's Ees to engage in work stoppages in course of their employment by refusing to perform services and cancelling contract with object of forcing or requiring E to reassign certain sewer installation work and also restrained and enforced E)

7580-4067 Indicia of objective

7580-4067-1200 Picket signs

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(claim of U that it was engaging in informational picketing only, rejected, where U claimed work, appeared at worksite with signs reading *E does not employ operators from Local U* and caused project to be shutdown)

7580-4067-6200 Statements to employers

Local 40, Ironworkers (Spancrete Northeast, Inc. **249 NLRB No. 112**
(statement made by agent for Respondent U at meeting between parties involved in work jurisdiction dispute that Respondent U would engage in strike and picket E unless work involved was assigned to its members rather than Ees of E who were represented by another U violative)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(claim of U that it was engaging in informational picketing only, rejected, where U claimed work, appeared at worksite with signs reading *E does not employ operators from Local U* and caused project to be shutdown)

7580-6000 Unless employer failing to conform to Board order or certification determining representative of employees performing work

7580-6050 Failure to comply with Board determination of dispute

Teamsters Local Union No. 170 (Massachusetts Laborers' District Council) **JD-39-80**
(violation where Bd awarded disputed work to Laborers in 10(k) proceeding and Teamsters continued to picket E for assigning such work to Laborers)

7580-8000 Section 10(k) proceedings for determination of jurisdictional dispute

7580-8020 Procedure under Section 10(k)

7580-8020-2200 Opportunity for voluntary adjustment

7580-8020-2225 Existence of agreed upon method for voluntary adjustment

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(no agreed-upon method for voluntary adjustment, where subcontractor, not contractually related to general contractor and necessary party herein, was not bound by IJDB award by virtue of general contractor's membership in Associated General Contractors)

7580-8020-4400 Quashing of notice of hearing

7580-8020-4450 No reasonable cause to believe Act violated

United Steelworkers of America, Local 12970 (Rainbow Security Systems, Inc.) **250 NLRB No. 106**
(where allegedly disputed work assignment was only one of 31 reasons for threat of generalized strike, E proposed to assign that work to Ees represented by U rather than to unrepresented Ees as concession to get something it considered more important from U, and assignment was agreed upon before strike and not a reason for it)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(dispute properly before Bd, notwithstanding contention of one of competing Us that it was merely engaging in informational picketing and that work was not claimed by proper Local of competing U, where U appeared at worksite, claimed work, and caused shutdown of project)

7580-8020-4458 Completion of project

Operating Engineers, Local 25, Marine Division, AFL--CIO (Great Lakes Dredge

7580-8020-4467 No jurisdictional dispute

United Steelworkers of America, Local 12970 (Rainbow Security Systems, Inc.) **250 NLRB No. 106**
(where allegedly disputed work assignment was only one of 31 reasons for threat of generalized strike, E proposed to assign that work to Ees represented by U rather than to unrepresented Ees as concession to get something it considered more important from U, and assignment was agreed upon before strike and not a reason for it)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(dispute properly before Bd, notwithstanding contention of one of competing Us that it was merely engaging in informational picketing and that work was not claimed by proper Local of competing U, where U appeared at worksite, claimed work, and caused shutdown of project)

7580-8020-4467—Cont.

Teamsters, Union Local 839 (Operating Engineers, Local 370) **249 NLRB No. 010**
(notice of hearing quashed where only dispute was between U and E, not between rival groups of Ees competing for same work)

7580-8020-4476 Disclaimer

Local Union No. 542, Operating Engineers (Local 15253, Steelworkers) **247 NLRB No. 159**
(notice of hearing not quashed since jurisdictional dispute existed, notwithstanding one U's disclaimer of interest in work through its attorney by letter and on record at hearing, where U had engaged in noninformational picketing at disputed worksite and threatened Ees and officers of conpeting U to prevent them from crossing picket line)

7580-8020-8800 **Board determination**

7580-8020-8850 Finding of reasonable cause to believe Act violated

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(U stated to general contractor that U would shut down construction project if subcontractor did not abide by anticipated IJDB award in favor of U; U stated to subcontractor that friendly relations would be impossible if disputed work was not reassigned; and U's picketing caused other Ees not to report to work)

7580-8040 Factors evaluated in making determination

7580-8040-1600 **Union agreement allocating work**

7580-8040-1683 Award of parent federation

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(award of jurisdiction by Joint Council not binding upon Bd)

7580-8040-4400 **Reconstituted Joint Board decisions**

Local Union No. 1333, Painters

7580-8040-4433 In subject case

Local Union No. 72, Boilermakers . 016
(although IJDB award was not binding on E, Bd considered it as factor in determining proper assignment of work in dispute; however, Bd gave award no controlling weight where Bd was unable to evaluate award because record did not indicate what evidence formed basis for award, and award did not explain even in cursory fashion what particular facts were relied upon)

7580-8040-4900 **Other awards or rulings**

7580-8040-4950 Arbitrator's award

Electrical Workers, Local 104 (Teamsters Local Union No. 170) **248 NLRB No. 134**
(controlling weight not given to award where one U in dispute neither participated nor agreed to be bound and arbitrator refused to consider any factors Bd might consider)

7580-8060 Board determination of jurisdictional disputes (by SIC category)

7580-8060-1500 **Building construction - General contractors**

Operating Engineers, Local No. 234 (Garmer Construction Co.) **251 NLRB No. 031**
(work operating forklift tractors used to transport building framing materials from stockpiles or delivery vehicles to structures being erected and movement of wooden structures onto buildings that are being erected or movement of such building materials to other points at projects awarded to Ees working at projects for housing of elderly people represented by Carpenters rather than to Operating Engineers)

International Brotherhood of Painters and Allied Trades of The United States and Canada, District Council No. 51, AFL-CIO (Plasters' Local Union No. 96) **250 NLRB No. 171**
(finishing of gypsum wallboard at construction sites of two stores on shopping mall awarded Ees represented by Plasterers rather than Painters)

7580-8060-1600 **Construction other than building construction - General contractors**

United Mine Workers of America; District No. 17, et al. (Elk Run Coal Company, Inc.) **251 NLRB No. 169**
(construction of coal mining complex awarded to Ees represented by Steelworkers rather than by United Mine Workers)

Local 157, Plumbers (Local 204, Laborers) **248 NLRB No. 032**
(installation of water lines, awarded to Ees represented by Laborers rather than Plumbers and Steamfitters)

Local Union No. 542, Operating Engineers (Local 15253, Steelworkers) **247 NLRB No. 159**
(clearing sites, grading for roadways, placing storm drainage, building excavation for place of driving of pilings and placing stone for site stabilization in area excavated at land fill assigned to Ees of E represented by Steelworkers rather than to Operating Engineers in view of bargaining agreement between Steelworkers and E and past practice)

7580-8060-1700 **Construction - Special trade contractors**

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(welding of pipes and joints at water reservoir project awarded to Ees represented by Operating Engineers rather than by Boilermakers)

Electrical Workers, Local 104 (Teamsters Local Union No. 170) **248 NLRB No. 134**
(operation of pickup and service trucks used to transport to and from jobsite and from locations w/i site electrical construction crew employed by contractor engaged in installation of traffic signals assigned to Ees of E represented by Electrical Workers rather than to Teamsters; notwithstanding arbitration award in which contractor was found to have breached contract by subcontracting work to E not using Teamster drivers where Electrical Workers did not participate or agree to be bound and arbitrator refused to consider any factors Bd might consider)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(operation of cranes mounted on E's semitractor rigs to erect prefabricated floors, walls, and trusses at construction of building assigned to Ees of E engaged in manufacture, sale, and erection of fabricated building components represented by Teamsters rather than to Operating Engineers in view of E preference, area practice, relative skills and economy of operation)

Drywall Tapers and Finishers, Local 2006, a/w Painters (Painters, Local Union 6) **248 NLRB No. 093**
(assignment of drywall taping performed by members of E association engaged in contruction business, awarded to Ees represented by Drywall Tapers and Finishers Local 2006, rather than International Brotherhood of Painters and Allied Trades of U.S. and Canada, Local 6)

Sheetmetal Workers' International Association, Local Union No. 9, AFL-CIO (Elward, Inc.) **250 NLRB No. 099**
(work of installing metal panels, including walls, floors and roofs assigned in ratio of 9-1 to Ees represented by Ironworkers and Sheetmetal Workers in composite crew based on E's past practice)

Local Union No. 1333, Painters

Ironworkers Local 25 (Glaziers and Glass Workers Local Union No. 357) **247 NLRB No. 200**
(work of unloading, storing, and installing storefront framing material on three construction projects for wholesaler, installer and contractor of glass installation work awarded Ees represented by Glaziers rather than by Ironworkers)

Local Union No. 683, Electrical Workers (Ducore, Inc.) **247 NLRB No. 154**
(installation of guide wires which are imbedded in concreate flour for use by forklift guidance system, awarded to Ees represented by Laborers rather than Electrical Workers)

7580-8060-2000 **Food and kindred products**

Carpenters District Council of Milwaukee County (District No. 10, Machinists and Aerospace Workers) **247 NLRB No. 189**
(work of installing and maintaining entire case stop assembly on pneumatic Automatic Depalletizers used at E's brewery awarded to millwrighis represented by carpenters rather than machinists)

7580-8060-2600 **Paper and allied products**

Woodworkers, Local 3--364; I.W.A. Joint Administration No. 1, Woodworkers (Local 712, United Paperworkers) **247 NLRB No. 193**
(operation, control, and maintenance of newly installed power boiler at manufacturer of paper and wood products assigned to Ees of E represented by Woodworkers rather than to Paperworkers in view of past practice, fact that new boilers will replace boilers manned by Woodworkers, and that supervisors would not have to supervise Ees from two separate units)

7580-8060-2700 **Printing, publishing, and allied industries**

Columbia Typographical Union No. 101, Affiliated with International Typographical Union, AFL-CIO (The Washington Post Company) **251 NLRB No. 026**
(work of operating scanner portion of EOCOM facsimile machine awarded to Ees represented by Typographical U rather than those represented by Graphic Arts U based on economy and efficiency of operation, past practice and E preference)

Newspaper Guild of New York, Local 3, The Newspaper Guild, AFL-CIO-CLC (New York Times Newspaper Division of The New York Times Company) **249 NLRB No. 135**
(recording of news stories called in by reporters and transcribing these recordings into video display terminal or typewriter at newspaper recording room assigned to Ees represented by Newspaper Guild rather than Typogra-

7580-8060-2700—Cont.

phers on basis of E's past practice, efficiency and economy of E's operations, skills and work involved and job impact)

Newspaper

Buffalo Printing Pressmen, Assistants and Offset Workers, Local Union No. 27 (Graphic Arts International Union, Local 17--B) **247 NLRB NO. 194**
(operation of delivery room conveyor lines equipment in production of newspaper at E engaged in printing books and magazines, awarded to Ees represented by Pressmen rather Bookbinders)

7580-8060-2800 Chemical and allied products

Warehouse Union Local 6 (Paint Makers and Allied Trades Union Local 1975, AFL-CIO) **247 NLRB No. 035**
(transferring paint and paint-related materials directly from holding tanks to tank trucks for paint manufacturer assigned to Ees represented by Paint Makers rather than by Longshoremen's and Warehousemen's Union)

7580-8060-3700 Transportation equipment

Millwrights and Machine Erectors Local No. 1906, Carpenters (Sheet Metal Workers', Local Union 19) **249 NLRB No. 025**
(erection of Eaton-Kenway automated mini-load storage system at automobile manufacturer's parts warehouse awarded to Ees represented by Sheet Metal Workers rather than Millwrights)

7580-8060-4200 Motor freight transportation and warehousing

Dallas General Drivers, Local 745 (Local 714, Operating Engineers) **247 NLRB No. 116**
(all fork-lift or fork truck work involving relocation, installation or removal of machinery or equipment in existing construction performed by Ees of specialized common carrier engaged in heavy equipment drayage and rigging and trade show convention handling assigned either to Ees represented by Teamsters and/or to Ees represented by Operating Engineers but to neither exclusively in view of E's past practice and E's desire to continue it)

7580-8060-4400 Water transportation

International Longshoremen's Association #1922; and International Longshoremen's Association #1526 (Sea-Land Service, Inc. (Atlantic Division)) **249 NLRB No. 069**
(disputed work of performing maintenance work on shoreside container crane for E engaged in containerized ocean transportation business at its loading facility awarded Ees represented by Marine Engineers and Seafarers rather than by Longshoremen)

7580-8060-4800 Communication

Theatrical Protective Union No. One, I.A.T.S.E., AFL-CIO (American Broadcasting Company, A Division of American Broadcasting Companies, Inc.) **249 NLRB No. 148**
(carrying and handling of handheld, mobile electronic television monitor used for cuing actors awarded to Ees represented by Theatrical Protective U, I.A.T.S.E., rather than Ees represented by National Association of Broadcast Ees and Technicians because of E's past practice, relative skills, job function and job impact)

7580-8060-5000 Wholesale trade - durable goods

International Longshoremen, Local No. 54 (General Teamsters Local No. 439) **248 NLRB No. 103**
(transportation of scrap metal from yard of E engaged in non-retail sale of scrap metal to dockside assigned to Ees of E represented by Teamsters, rather than to Longshoremen in view of collective bargaining agreement)

7580-8060-5300 Retail trade-general merchandise

Retail and Wholesale Warehousemen's Union, Local No. 130 (Nordstrom, Inc.) **250 NLRB No. 115**
(work of loading and unloading trucks at E's distribution center for retailing clothing and shoes awarded to Ees represented by Retail and Wholesale Warehousemen rather than Teamsters, in view of E preference, economy and efficiency of operation, and company practice)

IBT, General Warehousemen and Employees Union, Local 636 (Gimbel Brothers, Inc. **25 LRB No. 177**
(operation of freight elevators when used to haul store merchandise at E's store assigned to Ees represented by Teamsters rather than Service Employees)

7580-8080 Scope of award

7580-8080-2000>I14Similar dispute within entire geographic area of employer's normal operations

Sheetmetal Workers' International Association, Local Union No. 9, AFL-CIO (Elward, Inc.) **250 NLRB No. 099**
(scope of award encompasses whole state where E operates because nature of E's business, i.e., performing various jobs at one time with stable work force which is constantly interchanging, indicates that dispute is not restricted to one jobsite and dispute likely to arise again)

566 EXCESSIVE OR DISCRIMINATORY MEMBERSHIP FEES - (SEC. 8(b)(5))

2000 NATURE AND SCOPE OF PROSCRIPTION

4000 EXCESSIVE OR DISCRIMINATORY FEE

Brewery and Soft Drink Workers, Liquor Drivers and New and Used Car Workers, Local 1040 Teamsters (Pepsi-Cola Bottling Company; et al.) **249 NLRB No. 039**

(where U's decision to raise fees was part of overall reevaluation of initiation fees at all named Es as required by parent body, fact that fees at charging party E were raised 500 percent which was much more than at others not violative where no unlawful intention to create closed shop or monopolize employment for U members existed)

6000 RELEVANT FACTORS

8000 AFFIRMATIVE DEFENSES

572 PAYMENT FOR SERVICES NOT PERFORMED - (SEC. 8(b)(6))

0100 GENERALLY
5000 SCOPE OF PROSCRIPTION

578 PICKETING FOR RECOGNITION AND BARGAINING

0100 GENERALLY

2000 CONDUCT PROHIBITED WHEN FOR PROHIBITED OBJECT

4000 PROHIBITED OBJECTS - FORCING OR REQUIRING

4025 AN EMPLOYER TO RECOGNIZE OR BARGAIN WITH A LABOR ORGANIZATION AS REPRESENTATIVE OF HIS EMPLOYEES

4025-5000 What constitutes recognition and bargaining

4025-5050 To obtain initial acceptance as representative

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**

(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**

(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

6000 INDICIA OF OBJECTIVE

6007 PICKET SIGNS

6007-3300 Signs advising public employer does not have contract

Ogden Enterprises, Ltd. (Local 471, Restaurant Employees) **248 NLRB No. 046**

(notwithstanding U's picket signs and leaflets stating that E did not have contract with U and U's alleged purpose of persuading public to patronize restaurants with U contracts, Bd held U's picketing tantamount to demand for recognition where U neither pikceted all nonU restaurants nor did it attempt to inform public which restaurants had agreements with U; additionally U made no attempt to inform either public or E that it was not seeking recognition, and it was U's chief organizer, not business manager, who initially contacted and later met with E for purpose of discussing the picketing)

Local 1506, Carpenters (Best Drywall Co.) **JD-(SF)-266-79**

(picket signs held not to come w/i second proviso because of failure to state that E did not employ members of, or have a contract with, U)

6007-6700 Area standards signs

Miscellaneous Drivers and Helpers Union Local 610 (Tower Hotel, Inc.) **JD-238-80**

(U's picketing of E with signs stating wages and working conditions of E were not equal to those of U members and also containing recognitional disclaimer not violative where U had contract with another E which did establish area standards, U was aware of wages, though not fringe benefits, paid to Ees of picketed E, U made no cliam to represent Ees of E)

Congress of Independent Unions and Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 172 (C.A. 8, 1980)**

(U's picketing violative since E had lawfully recognized another U; respondent U's picketing had recognitional object where letters to E and pickets stated that Ees were working under conditions substandard to those enjoyed by its members and picketing commenced w/i 2 weeks of Bd overruling its objections to election)

6031 STATEMENTS OF UNION LEADERS

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 059**

(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**

(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

6035 STATEMENTS TO EMPLOYERS

Local 1506, Carpenters (Best Drywall Co.) **JD-(SF)-266-79**

(U representative's asking what were chances of getting a contract, requesting E to join U and stating that for E to join U would be a lot easier on him)

6046 CONDITION FOR DISCONTINUANCE OF PICKETING

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**

(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

6063 AREA STANDARDS OBJECTIVES

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**

(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**

(*area standards* picketing permissible if there is no recognitional or organizational purpose)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**

(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

6063—Cont.

Miscellaneous Drivers and Helpers Union Local 610 (Tower Hotel, Inc.) **JD-238-80**
(U's picketing of E with signs stating wages and working conditions of E were not equal to those of U members and also containing recognitional disclaimer not violative where U had contract with another E which did establish area standards, U was aware of wages, though not fringe benefits, paid to Ees of picketed E, U made no cliam to represent Ees of E)

6091 DISCLAIMER OF INTEREST IN RECOGNITION

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**
(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

8000 CIRCUMSTANCE WHERE RECOGNITIONAL PICKETING PROHIBITED

8025 WHERE EMPLOYER HAS RECOGNIZED ANOTHER LABOR ORGANIZATION - CLAUSE 8(b)(7)(A)

8025-3300 Recognition lawful

8025-3320 Majority representative

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(in 8(b)(7)(A) proceeding, U's evidence tending to show that incumbent U's majority may have been tainted and not uncoerced held insufficient to rebut conclusion that incumbent had been lawfully recognized; U's evidence of sporadic substitution for supervisors by Ees participating in U activities, supervisor's election to U office, apparent acceleration of dues checkoff, and brief nature of, and rapidly concluded, negotiations had little probative value in support of U's contentions)

Congress of Independent Unions and Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 172 (C.A. 8, 1980)**
(U's picketing violative since E had lawfully recognized another U; respondent U's picketing had recognitional object where letters to E and pickets stated that Ees were working under conditions substandard to those enjoyed by its members and picketing commenced w/i 2 weeks of Bd overruling its objections to election)

8050 WHERE VALID ELECTION CONDUCTED WITHIN PRECEDING TWELVE MONTHS - CLAUSE 8(b)(7)(B)

8050-0100 Generally

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL)**
(no valid election existed until Bd had certified the results, the point in time at which *all challenges and objections have been ruled upon or otherwise disposed*)

8050-2000 Election among employees for whom recognition sought

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL)**
(U's continuing recognitional picketing after election, not violative, since Bd had not resolved challenged ballots)

8075 WHERE PICKETING FOR MORE THAN REASONABLE TIME WITHOUT PETITION BEING FILED - CLAUSE 8(b)(7)(C)

8075-2000 Reasonable time of picketing

8075-2017 Not to exceed thirty days

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**
(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 059**
(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

Oil, Chemical and Atomic Workers International Union, Local 6-578 (D

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL)**
(U's post election recognitional picketing, not violative, since U filed ptn for election 28 days after commencement of picketing)

8075-2067 Tacking of periods of picketing

Local 1506, Carpenters (Best Drywall Co.) **JD-(SF)-266-79**
(U held to have picketed E more than reasonable time where, notwithstanding it had picketed E at two different jobsites in two consecutive months each time for less than 30 days, it had nevertheless thereby picketed same E for total of more than 30 days w/o filing ptn for election)

8075-8000 Informational picketing not prohibited (second proviso, clause 8(b)(7)(C)

8075-8001 Generally

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 059**
(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

8075-8050 Purpose of activity

8075-8050-9800 Picketing for area standards

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

8075-8075 Except where having prohibited effect

8075-8075-3300 Effect not dependent upon intent

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 059**
(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

584 AGREEMENTS TO CEASE DOING BUSINESS

0100 GENERALLY

0120 NATURE AND PURPOSE OF PROSCRIPTION

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(activities and agreements that seek not to preserve traditional work of displaced Ees but to acquire work of other Ees are unlawful under congressional proscription)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(*Sec. 8(e)* proscribes *not secondary activity,* but *collective-bargaining contracts* whereby E ceases or agrees to c/d/b with any other person)

0140 CONSTRUCTION OF LEGISLATIVE HISTORY

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(legislative history of construction industry proviso demonstrates that Congress expressed its intent to exempt from proviso total process of transporting materials in spite of fact that some tasks in process might take place on construction site; in interpreting legislative history of proviso Bd has consistently adhered to narrow definition of jobsite work, refusing to apply proviso's coverage to various types of transportation work or to offsite work merely because such work could be done at construction site)

Teamsters, Local Union 222 (S.J. Groves

1200 FACTORS MATERIAL TO APPLICABILITY OF SECTION 8(e)

1250 AGREEMENT 'ENTERED INTO' WITHIN STATUTORY MEANING

1250-5000 Reaffirming, maintaining or enforcing agreement

Chicago Dining Room Employees, Cooks

1275 OBJECTIVES PROSCRIBED

1275-6700 Cease doing business with any other person

Teamsters, Local Union 222 (S.J. Groves

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(*Sec. 8(e)* proscribes *not secondary activity,* but *collective-bargaining contracts* whereby E ceases or agrees to c/d/b with any other person)

1275-6733 What constitutes doing business

1275-6733-5000 Sale of capital assets

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposal which in effect would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, held not to relate to E's *doing business* w/i meaning of Sec. 8(e), since transfer of portion of E's business under that clause would involve no continuing relationship with the purchaser)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(proposal that would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, not unlawful, even if conveyance of portion of E's business operations, restricted by proposed clause, constituted *doing business* w/i meaning of Sec. 8(e); effect of clause is primary because it serves to benefit only E's own Ees, and does not seek to enlist E's aid in affecting labor relations of anyone who is not employer of those same Ees)

2500 EMPLOYEE OR UNION ACTION AUTHORIZED BY AGREEMENT

2501 GENERALLY

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(provision alleged to be violative of 8(e) not rendered lawful by another provision stating *any other exclusions from construction industry proviso, previously defined by NLRB or cts, shall continue to be applicable in interpreting (alleged unlawful provision); explicit self-contained and clearly illegal contractual provision ... will not be purged of illegality by vague and general savings clause*)

2511 REFUSAL TO HANDLE PRODUCTS

2511-3300 Application of 8(e) proscription

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

2522 REFUSAL TO WORK

2522-3300 Application of 8(e) proscription

Teamsters, Local Union 222 (S.J. Groves

2533 REFUSAL TO CROSS PICKET LINES

Teamsters, Local Union 222 (S.J. Groves

2577 ASSESSMENT OF PENALTIES UPON CONTRACT BREACH OR NON-PERFORMANCE

2577-3300 Application of 8(e) proscription

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

2588 EXTENSION OF AGREEMENT TO NONSIGNATORY EMPLOYERS

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(provision which would require contractor to c/d/b with independent contractor dump truck owner-operators on any terms other than those applicable to unit Ee drivers under master agreement, violative, since not w/i construction industry proviso where owner-operators engaged in transportation of materials between geographical sites of construction controlled by different contractors, nor if engaged in transportation between sites up to 10 miles apart controlled by some contractor, since proviso does not apply to jobsite deliveries which are only small part of basically

Teamsters, Local Union 222 (S.J. Groves

3700 EMPLOYER ACTION LIMITED BY AGREEMENT

3740 PARTIAL RESTRAINT ON, OR CONDITIONING OF, SUBCONTRACTING

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

3740—Cont.

(provision which would require contractor to c/d/b with independent contractor dump truck owner-operators on any terms other than those applicable to unit Ee drivers under master agreement, violative, since not w/i construction industry proviso where owner-operators engaged in transportation of materials between geographical sites of construction controlled by different contractors, nor if engaged in transportation between sites up to 10 miles apart controlled by some contractor; since proviso does not apply to jobsite deliveries which are only small part of basically

3740-1700 Requiring subcontractor or lessee to be union signatory or agree to adhere to union contract

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

Chicago Dining Room Employees, Cooks

Teamsters, Local Union 222 (S.J. Groves

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposed *leasing-licensing out* clause which would forbid E from licensing out its operations absent compliance with contract terms for licensee E's Ees, unlawful, since transfer under clause constitutes *doing business* w/i Sec. 8(e); proposed clause effectively controls labor relations of licensee-E and benefits U members generally rather than E's own Ees)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposed clause which prohibits contracting out work customarily performed by E's Ees unless that work is performed by U members, unlawful)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposed clause that specified that *contracting, subcontracting, leasing and subleasing and construction work* would be *conducted in accordance with* requirement of other clauses, unlawful, since clause would require E to comply with other clauses found herein to be illegal)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposed clause that would permit construction work to be performed by *outside contractor as are designated by E* only when such work was contracted out *under the jurisdiction* of U and when qualified U members were not available, unlawful)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

3740-5900 Work preservation provision

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

Teamsters, Local Union 222 (S.J. Groves

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

3750 LIMITATION UPON RENTAL OR USE OF FACILITIES

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposed *leasing-licensing out* clause which would forbid E from licensing out its operations absent compliance with contract terms for licensee E's Ees, unlawful, since transfer under clause constitutes *doing business* w/i Sec. 8(e); proposed clause effectively controls labor relations of licensee-E and benefits U members generally rather than E's own Ees)

3758 LIMITATION UPON USE OF INDEPENDENT CONTRACTORS

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

3770 LIMITATIONS UPON CONDITIONS OF SALE OF CAPITAL ASSETS

3770-5000 Requiring purchaser to be union signatory

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposal which in effect would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, held not to relate to E's *doing business* w/i meaning of Sec. 8(e), since transfer of portion of E's business under that clause would involve no continuing relationship with the purchaser)

3780 DIMINUTION OF UNIT WORK

3780-3300 Unit work as defined by agreement

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

3780-6700 Fairly claimable unit work

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

4300 EMPLOYER ACTION REQUIRED BY AGREEMENT

584-AGREEMENTS TO CEASE DOING BUSINESS

5000 CONSTRUCTION INDUSTRY EXEMPTION

5014 SCOPE AND PURPOSE, GENERALLY

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(transportation of materials between construction sites controlled by different contractors not w/i construction proviso whether or not both actual construction sites, nor is transportation of material to sites 10 miles apart controlled by same contractor w/i proviso since drivers spend little time on jobsite compared to offsite travel and purpose of proviso has little relevance to persons having such incidental contact with site)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(contention that definition of jobsite work in construction industry proviso of 8(e) should be indentical to definition of jobsite work in Davis-Bacon Act, rejected, since that Act broader in coverage as remedial statute than 8(e) proviso)

5042 AGREEMENT RELATING TO CONTRACTING OR SUBCONTRACTING

Teamsters, Local Union 222 (S.J. Groves

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

5056 WORK TO BE DONE AT CONSTRUCTION SITE

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(deliveries to and from jobsite not w/i construction industry proviso)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(offsite activity not per se secondary activity w/i Section 8(e); jobsite limitation in construction industry proviso has no relevance to primary or secondary nature of activity as defined in *National Woodwork Manufacturers v. NLRB*)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(mixing, delivery and pouring of readymix concrete; delivery of precast concrete pipe; bringing of tools, materials, and personnel to and from site of construction and delivery of landfill do not constitute jobsite work)

Teamsters, Local Union 222 (S.J. Groves

6200 GARMENT INDUSTRY EXEMPTION

7500 AFFIRMATIVE DEFENSES

8700 SAVINGS CLAUSE

590 PREHIRE AGREEMENTS - SECTION 8(f)

0100 GENERALLY

2500 QUALIFICATION OF PARTIES TO ENTER AGREEMENT

5000 PERMISSIBLE CONDITIONS OF AGREEMENTS

5001 GENERALLY

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

5001-7500 Applies only to initial recognition situations

Queen City Paving Co., Inc. **JD-(SF)-156-80**

(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec. 8(f) was no defense because of existence of qcr)

7500 EFFECT OF AGREEMENT

7575 ESTABLISHMENT OF SECTION 8(d) BARGAINING OBLIGATION

7575-5000 Must define projects or area to which applicable

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**

(E held obligated to recognize and bargain with U for prospective as well as current jobsites, since (a) E's Ees had tendered their designation cards w/i determinative payroll period, and (b) U had signed authorization cards from majority in unit of E's permanent Ees when it demanded recognition, so that contract was not 8(f) prehire contract valid only for current jobsite as E contended)

Land Equipment Inc. **248 NLRB No. 098**

(where E employs stable complement of Ees majority need not be established at each jobsite)

D'Angelo

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**

(repudiation of contract unlawful, where 8(f) pre-hire agreement was transformed into bargaining agreement when U achieved majority status in relevant bargaining unit composed of Ees at E's two construction projects rather than on project by project basis, and rebuttable presumption of continuing majority status applied to unit notwithstanding potential change in its Ee composition and eventual relocation to other, future projects)

8700 ENFORCEMENT OF AGREEMENT

The Carpenters District Council of North Central Texas v. North Texas Contractor Assoc. et al. **No. CA3-76-1151-F (D Ct. TX, Feb. 21, 1979 (unreported))**

(when U did not have majority status, it could not enforce contract provision which called for arbitration of disputes)

593 PICKETING AND STRIKES AT HEALTH CARE INSTITUTIONS (SECTION 8(g)

0100 GENERALLY

2000 ACTIVITY SUBJECT TO NOTICE REQUIREMENT

2025 FORMS OF ACTIVITY

2025-6000 Work stoppages

Leisure Lodge Nursing Home **250 NLRB No. 134**
(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

Leisure Lodge Nursing Home **250 NLRB No. 134**
(half hour work stoppage at nursing home to present grievances, protected)

4000 NOTICE REQUIREMENT

4001 GENERALLY

Laborers', Local 1253 (St. Mary's Hospital of Roswell, Inc.) **248 NLRB No. 030**
(no notice required where health care institution is only secondary E)

4028 TO WHOM NOTICE MUST BE GIVEN

Laborers', Local 1253 (St. Mary's Hospital of Roswell, Inc.) **248 NLRB No. 030**
(U's failure to conform to Sec. 8(g) requirements for giving notice to FCMS and health care institution not violative, where U made it clear it was picketing only primary E contractor and limited picketing to places reasonably close to primary dispute's situs, and secondary health care institution could have established reserve gates but did not do so)

4036 BY WHOM NOTICE MUST BE GIVEN

Leisure Lodge Nursing Home **250 NLRB No. 134**
(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(walkout by two nurses aides held not to have lost protection under Sec. 8(g), notwithstanding their failure to give 10 days' notice of intent to strike, since Sec. 8(g) does not apply where labor organization is not involved, and strike here did not involve labor organization, and E and U were not then discussing issue which precipitated strike)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

6000 CONFORMANCE OF ACTIVITY TO NOTICE

8000 THREATS TO STRIKE, PICKET OR ENGAGE IN WORK STOPPAGE

Leisure Lodge Nursing Home **250 NLRB No. 134**
(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

596 PROCEDURE IN ULP PROCEEDINGS

0100 GENERALLY

0125 APPLICABILITY AND EFFECT OF APA

0125-9200 Section 10--application; definitions (5 USC Sec. 701(a)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

0125-9600 Section 10(a)--right of review (5 USC 702)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

0175 EFFECT OF PRIOR PROCEEDINGS (See also, RES JUDICATA 750-0000)

Schorr Stern Food Corp. **248 NLRB No. 050**
(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

0175-5000 Where ULP proceeding based in whole or part upon facts certified in R proceeding

0175-5025 No relitigation in related subsequent ULP proceeding of issues resolved in R proceeding

Hedison Manufacturing Company **249 NLRB No. 096**
(where in prior R proceeding challenge to ballot of floorlady on ground she was supervisor was overruled, and in instant ULP proceeding ALJ found he was prohibited by R/R Sec. 102.67(f) from relitigating her status, Bd ruled that, since she was not alleged to have engaged in any ULPs and her status would not affect finding of U's majority support, it was not necessary to make new determination as to her status or to consider GC's assertion that such determination would be consistent with Bd's Serv-U-Stores decision (Cote))

0175-5025-3300 Where stipulated by parties

Flair Molded Plastics, Inc. **250 NLRB No. 017**
(that U is a labor organization)

0175-5025-7500 Where request for review denied

Madison Detective Bureau, Inc. **250 NLRB No. 062**

0175-5050 Issues as to which relitigation precluded

0175-5050-6700 Objections to election

Wright

0175-5075 Issues as to which relitigation permitted

0175-5075-5000 Supervisory status of employee

Hedison Manufacturing Company **249 NLRB No. 096**
(where in prior R proceeding challenge to ballot of floorlady on ground that she was supervisor was overruled, Bd held her status could be relitigated in instant ULP proceeding since she was expressly alleged to be supervisor and to have engaged in unlawful conduct in her supervisory capacity (Di Carlo))

Cardinal Heating and Cooling, Inc. **JD-835-79**
(although agreement between U and E involving exclusion of Ee from bargaining unit because he was supervisor may be of *persuasive relevance* in subsequent complaint proceeding dealing with representation, it is not conclusive and does not preclude litigation of supervisory issue in *unrelated* ULP proceeding)

0400 LIMITATION OF ACTIONS

0420 SECTION 10(b) 6-MONTH LIMITATION

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(ULP allegations not time barred where original charge, naming subsidiary as E, whose assets and liabilities were transferred to respondent, was timely filed, and amended charge, while filed outside 10(b) period, was identical to original charge except for naming respondent as E; failure to originally name respondent as E was clearly a misnomer and is not fatal to pleadings)

Charmer Industries, Inc. **250 NLRB No. 031**
(where charge and C alleged that Es unilaterally changed procedures for collecting c.o.d. payments by having salesmen replace delivery drivers, represented in another unit, in making collections, ALJ rejected Es' contention that C was barred under Sec. 10(b) on ground that change itself came about through bargaining regarding duties of drivers and that, since neither charge nor C alleged unlawful failure to bargain about effects of change upon working conditions of salesmen, there was a variance between allegations and proof which required dismissal of proceeding)

Actors' Equity Association **247 NLRB No. 172**
(allegations of enforcement of disparate U dues with respect to Ee held not timely, where only action taken by U w/i 10(b) period was U's counterclaim in Ee's ct suit, for dues U had previously determined Ee owed; meanwhile, levy of dues, Ee's appeal therefrom, and rejection of appeal occurred more than 6 months before filing of charge)

0420-0100 Generally

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(burden of proving facts which support defense of limitations necessarily rests upon one who pleads it, since statute of limitations contained in Section 10(b) is affirmative defense)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from goup bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b)

0420-0100—Cont.

period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

0420-5000 Runs from effective date of ULP

Dardanell Enterprises, Inc. **250 NLRB No. 050**
(charge not barred by fact that U's initial request to bargain outside 10(b) period since Bd treats request as continuing)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(charge barred where outside 10(b) period)

0420-5050 What constitutes effective date

American Bakeries Co., Inc. **249 NLRB No. 170**
(date of actual discharge, and not date of notice of intent to discharge Ee, determined timeliness of charge; events occurring before discharge formed background for charge)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(by delivering payroll records at arbitration hearing, and thereafter allowing U to inspect other records in connection with bargaining agreement, E did not repudiate bargaining relationship sufficiently to begin running of 10(b) period)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(Bd precluded from remedying E's failure to make benefit payments to trustee prior to 10(b) period as U had knowledge of such nonpayment and took no action under Act to get E to comply with contract, however, every monthly failure to submit contractual payment to fund is separate and distinct violation and E liable for delinquincies w/i 10(b) period)

General Marine Transport Corporation v. N.L.R.B. **619 F.2d 180 (C.A. 2, 1980)**
(10(b) period began to run from date that charging party could have filed charge for E's initial repudiation of multi-E association contract since E's subsequent repeated repudiations of contract were only repetitions of its earlier conduct rather than separate ULP's)

General Marine Transport Corporation v. N.L.R.B. **619 F.2d 180 (C.A. 2, 1980)**
(10(b) period begins to run from time of initial repudiation of contract and actions taken as result of this repudiation, which normally would be violative, are time barred if charge is filed more than 6 months after repudiation as charge *inescapably grounded* on time barred event; namely, repudiation of contract; ct rejected *continued violation* theory)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(notwithstanding supervisor (also president of U) did not negotiate bargaining agreement w/i 6 month period of charges being filed, 10(b) period did not begin to run because as U President he was responsible for processing grievances; though only 1 grievance filed and it became subject of ULP charge in instant case does not alter result because official's dual role itself may account for lack of grievances)

0420-6200 Six-month period dates from first charge

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U to reimburse each applicant or Ee who made payments to U for its referral system when in actuality no such system existed; liability limited by Section 10(b) to 6-month period prior to filing and service of original charge)

0420-6250 Reinstatement of charge after withdrawal

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(amendment to complaint to include additional allegation of ULP which had previously been administratively dismissed from original charge by RD not time-barred by 10(b))

0420-8700 Amendment of charge

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(alleged violations subject of separate charge filed more than 6 months after events alleged as unlawful held not time-barred since such events were brought into instant litigation by amendment to broadly phrased complaint which alleged numerous incidents of interference and discrimination and incidents at issue were of same character as others alleged as unlawful in original complaint: under the circumstances, specific charge was superfluous and allegations were sufficiently related to original charges and complaint to be amended)

Leyendecker Paving, Inc. **247 NLRB No. 010**
(although charge says nothing about *more onerous* work, ALJ allowed amendment to complaint over 10(b) objection, where other allegations properly flowed from charges, albeit in most general way, and amended charge was closely related to those *violations*)

0420-8775 May relate back to original charge

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(amendment to complaint to include additional allegation of ULP which had previously been administratively dismissed from original charge by RD not time-barred by 10(b))

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(amendment of C to allege additional violation proper where sufficiently related to allegations in original C notwithstanding would otherwise be outside 10(b) period)

0440 CONSIDERATION OF TIME-BARRED EVENTS AS BACKGROUND TO EXPLAIN LATER EVENTS PERMISSIBLE

0440-1200 Where purpose is for fuller understanding of contention

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**
(supervisor's statements made outside 10(b) period that E could not fire one Ee for signing U authorization card or stop another Ee from joining U although not usable as evidence of ULPs, could serve as indicator of motivation of supervisor attributable to E)

American Bakeries Co., Inc. **249 NLRB No. 170**
(date of actual discharge, and not date of notice of intent to discharge Ee, determined timeliness of charge; events occurring before discharge formed background for charge)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(U's failure to refer alleged discriminatees outside 10(b) period admissible as evidence of animosity and as background to support finding of unlawful refusal to refer w/i 10(b) period)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(ALJ's consideration of supervisor's statements, held proper notwithstanding the statements were made more than six months before charge was filed; ALJ considered the statements as background evidence for *adducing E's motivation for its acts w/i 10(b) period*)

0440-5000 Enforcement within period of contract illegal in execution because of time-barred events

Actors' Equity Association **247 NLRB No. 172**
(Bd's consideration of maintenance and enforcement of U security agreements and U's dues structure held not barred; since violation rests on U's dues structure in conjunction with contracts, circumstances at time of execution of contracts are not critical; moreover, there was at least one instance of enforcement of U security provision w/i 10(b) period; contention that dues checkoff was *benign* because U did not seek imposition of job related sanction to compel dues payment, and such *benign* acts are not ULPs, rejected)

0460 LIMITATION NOT APPLICABLE TO CONTINUING ULP

Dardanell Enterprises, Inc. **250 NLRB No. 050**
(charge not barred by fact that U's initial request to bargain outside 10(b) period since Bd treats request as continuing)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(Bd precluded from remedying E's failure to make benefit payments to trustee prior to 10(b) period as U had knowledge of such nonpayment and took no action under Act to get E to comply with contract, however, every monthly failure to submit contractual payment to fund is separate and distinct violation and E liable for delinquincies w/i 10(b) period)

Local 1115, Joint Board, Nursing Home

United States Postal Service **248 NLRB No. 002**
(issuance of complaint alleging that basic arrangement between E and U by which they restricted power of Ees to revoke checkoff to single annual event rather than at will and effective twice yearly as prior to enactment of exception to NLRA embodied in Section 1205(b) of Postal Reorganization Act, not barred by Section 10(b), notwithstanding that the ULP charge was filed after more than five years subsequent to date when E and U made alleged basic arrangement; the arrangement was continued to at least time of hearing herein)

General Marine Transport Corporation v. N.L.R.B. **619 F.2d 180 (C.A. 2, 1980)**
(10(b) period begins to run from time of initial repudiation of contract and actions taken as result of this repudiation, which normally would be viola-

0460—Cont.

tive, are time barred if charge is filed more than 6 months after repudiation as charge *inescapably grounded* on time barred event; namely, repudiation of contract; ct rejected *continued violation* theory)

0465 TOLLING OF PERIOD

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(charge held timely filed where although events on which charged was based, E's hiring of separate non-U carpentry crew, occurred before 10(b) period, they were not known by U until 10(b) period, because E fraudulently concealed their occurrence by assuring U that it would no longer employ carpenters, thus tolling 10(b) period)

0600 AVAILABILITY OF BOARD PROCESSES TO PARTIES ENGAGING IN INVIDIOUS DISCRIMINATION

0700 FURTHER CONSIDERATION, RECONSIDERATION

0800 CHARGE

0855 TIMELINESS OF SERVICE TO STOP 10(b) PERIOD

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though 6-month period lapsed on a Sunday, a day before charges were served through mail, ct held that, pursuant to Bd's R/R, period extended to following day, Monday, making service of charges by mail on that day, as well as U's filing of charges, timely)
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N.L.R.B. v. Preston H. Haskell Company

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
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0866 AMENDMENT OF CHARGE

0866-2500 Not equivalent to withdrawal of original charge

Charge Card Association **247 NLRB No. 119**
(ammended charge dropping particular allegation is withdrawal of charge in that particular)

0888 DISMISSAL OF CHARGE

0888-6700 Appeal to General Counsel from RD dismissal

0888-6767 Reinstatement of charge

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(where after dismissing allegation of unlawful discharge from original charge, RD, upon charging pary's appeal to GC, reconsidered and again included deleted charge, Bd's overruling ALJ's refusal to permit GC to amend complaint to include deleted charge, proper, since charge remained alive and pending during appeal process)

1200 PARTIES

1220 CHARGING PARTY

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that charging party, E's bargaining representative, was equitably barred in instant 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since *clean hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that charging party, E's representative has no standing or valid interest permitting him to file charge in instant 8(b)(1)(B) proceeding, rejected, in view of R/R Sec. 102.9)

1260 NECESSARY PARTIES

1260-0100 Generally

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(exceptions taken by respondents as to correct name of one of respondents held untimely where respondents never raised issue as to correct name of respondent until exceptions were filed with Bd and respondents did not contend that they suffered any prejudice due to use of alleged incorrect name)

1260-1500 Parent of subsidiary

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(where parent company was not named in proceeding until after ct remanded to Bd, it will not be named as R as it was never afforded opportunity to defend itself against ULP charges or litigate its relationship with E; determination can be made at compliance stage of proceeding)

1260-8000 Trustee in bankruptcy

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(deletion of trustee in bankruptcy as party respondent from original complaint pursuant to ct order does not bar GC from raising issue of trustee's derivative liability for first time in backpay proceeding)

1600 SERVICE OF DOCUMENTS

1683 SERVICE OF CHARGE OR COMPLAINT

1683-8000 Date of service is date of mailing

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though charges were received 2 days after mailing date)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though charges were received 2 days after mailing date)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though charges were received 2 days after mailing date)

2000 CONDUCT OF INVESTIGATION

2010 CASE FILES

Schorr Stern Food Corp. **248 NLRB No. 050**
(although documents pertaining to correspondence between respondent and RD, and also internal memorandum between GC and RD, had erroneously been placed in *formal* instead of *informal* case file, Bd held backpay proceeding before ALJ was not prejudiced as result, and did not require ALJ to disqualify himself from case or to dismiss backpay specification; documents were either not relevant to backpay proceeding or were otherwise not prejudicial, and E's counsel was given full opportunity at hearing to examine documents)

Schorr Stern Food Corp. **248 NLRB No. 050**
(documents which had been erroneously placed in *formal* instead of *informal* case file in backpay proceeding before ALJ, entered in rejected exhibit file, rather than merely being marked for identification and forwarded to GC's office for inclusion in informal file)

2400 RULINGS AND AUTHORITY OF REGIONAL DIRECTOR

2425 TO TAKE SETTLEMENTS

Ramona A. Drobena, et al. v. N.L.R.B. **612 F.2d 1095 (C.A. 8)**
(where parties stipulated that U had violated 8(b)(1)(A), ct found no abuse of agency discretion when Bd, in accordance with its long-standing policy, entered consent cease-and-desist order against U but did not require U to pay backpay to individual Ees who lost work on account of U's unlawful practices)

2800 SETTLEMENTS

2801 GENERALLY

2801-2000 Purpose and objectives

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(to avoid unnecessary litigation)

2801-6000 Authority and discretion of Board

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(Bd has wide discretion in determining whether representation election has been fairly conducted and its decision warranted special respect on review; however such discretion is not unlimited)

2801-7500 Conditions of settlement

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall pro-

2801-7500—Cont.

cedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

2801-8000 Effect of nonadmissions clause

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(Settiement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO **DS-1367-80 (06/01/80)**
(charging party's objection to broad nonadmission clause because clause might preclude contempt citation in ct of appeal or jeopardize possibility of Section 303 suit, rejected, since contempt not precluded if warranted and Federal Rules of Evidence precludes use of settlement stipulation to establish Respondent's liability; further, substantial remedy provided outweighed possible detriment that language might prevent introduction of Settlement Stipulation for purposes permissible under Federal Rules)

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 **DS-1364-80**
(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd's administrative action; and (3) limitations in clause upon charging party's rightto use stipulation would deprive it of due process of law; see also DS-1366-80)

2820 FORMAL SETTLEMENTS

2820-5000 Board order

Accessory Control and Equipment Corporation **248 NLRB No. 001**
(where parties did not agree to include in formal settlement agreement provision for ct enforcement, Bd refused to amend ALJ's recommended order to so provide)

2860 UNILATERAL SETTLEMENTS

2860-4900 Opportunity to inspect investigatory file

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 **DS-1364-80**
(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd's administrative action; and (3) limitations in clause upon charging party's rightto use stipulation would deprive it of due process of law; see also DS-1366-80)

2860-7000 Consideration of objections

2860-7037 By Administrative Law Judge

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

2860-8400 Basis of objection

2860-8410 Other type of proceedings more appropriate

2860-8410-5000 Hearing

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(Settlement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

United Mine Workers of America **DS-1311-80 (02/04/80)**
(objection to Stipulation because pattern of unlawful conduct could only be interdicted by litigating cases before ALJ, Bd and cts, and U's unlawful conduct such that it requires specific remedial relief found w/o merit where Settlement remedies all ULP charges in C and in event U does not comply Bd is empowered to seek contempt in circuit ct)

2860-8420 Remedy provisions insufficient

2860-8420-1700 Notice provisions inadequate

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company) **DS-1309-80 (01/24/80)**
(notice posting requirement which called for posting at Respondents business offices, meeting halls and other places where notices to members are customarily posted and posting at company's facility, if it is willing, constitutes adequate notice of settlement)

2860-8420-6200 Order provisions inadequate

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notiwthstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

Building and Construction Trades Council of Philadelphia and Vicinity, et al. **DS-1320-80 (02/08/80)**
(where Bd approved Settlement Stipulation, no merit was found in individual Ee's argument that provision in Notice concerning status of local's contract will give other Ees impression that Bd approved U contract)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company) **DS-1309-80 (01/24/80)**
(stipulation fully remedies allegation of complaint where it provides for entry of formal Bd order and consent court judgment)

2860-8420-6700 Reinstitute operation

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(where ALJ approved settlement agreement which did not require E who had violatively transferred work to another plant to resume operations, Bd reversed ALJ's approval in light of fact that no evidence that such resumption would endanger E's economic viability)

2860-8440 Backpay provisions

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

Ramona A. Drobena, et al. v. N.L.R.B. **612 F.2d 1095 (C.A. 8)**
(where parties stipulated that U had violated 8(b)(1)(A), ct found no abuse of agency discretion when Bd, in accordance with its long-standing policy, entered consent cease-and-desist order against U but did not require U to pay backpay to individual Ees who lost work on account of U's unlawful practices)

2860-8450 Other charges pending

Building and Construction Trades Council of Philadelphia and Vicinity, et al. **DS-1320-80 (02/08/80)**
(contention that settlement of allegations inappropriate because of close relation between violation covered in settlement and alleged violation in another case before Bd involving Ee rejected)

2860-8460 Nonadmissions clause

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO **DS-1367-80 (06/01/80)**
(charging party's objection to broad nonadmission clause because clause might preclude contempt citation in ct of appeal or jeopardize possibility of Section 303 suit, rejected, since contempt not precluded if warranted and Federal Rules of Evidence precludes use of settlement stipulation to establish Respondent's liability; further, substantial remedy provided outweighed possible detriment that language might prevent introduction of Settlement Stipulation for purposes permissible under Federal Rules)

Plumbers Local Union No. 420 (Refinery and Industrial Maintenance, Inc. **DS-1365-80 (07/08/80)**

2860-8460—Cont.

(notwithstanding non admission clause might prevent charging party from introducing Settlement Stipulation into evidence for purposes permissible under Rule 408 of FRE, substantial remedy provided far outweighs harm to Charging Party)

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 **DS-1364-80**
(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd's administrative action; and (3) limitations in clause upon charging party's rightto use stipulation would deprive it of due process of law; see also DS-1366-80)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company) **DS-1309-80 (01/24/80)**
(inclusion in settlement of nonadmissions clause not valid basis for objection)

2860-8470 No findings of facts and/or conclusions of law

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(Settlement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

2860-8490 Waiver of rights

Plumbers Local Union No. 420 (Refinery and Industrial Maintenance, Inc. **DS-1365-80 (07/08/80)**
(notwithstanding non admission clause might prevent charging party from introducing Settlement Stipulation into evidence for purposes permissible under Rule 408 of FRE, substantial remedy provided far outweighs harm to Charging Party)

2880 SETTING ASIDE OF SETTLEMENT AGREEMENT

2880-6700 Basis for setting aside

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(Bd rejected proposed settlement between E, U, and Ee since it did not include, *inter alia*, an offer of reinstatement to discriminatee)

2880-6750 Postsettlement conduct breaching agreement necessary

Magic Mountain Corporation **JD-337-80**
(RD properly set aside settlement agreement which called for reinstatement of ski patrol member to former or substantially equivalent position where Ee was reinstated to job handling sewage disposal)

United States Postal Service **JD-(SF)-273-79**
(settlement reinstated where complaint alleged conduct that occured before and after settlement agreement, and though all allegations fully litigated, finding of no violations relatinng to post settlement allegations established that E had fully complied with settlement agreement)

2880-6787 Failure to restore *status quo*

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(where Bd finds discriminatory conduct, restoration of *status quo ante* is proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

2880-7500 Effect on stipulation contained in agreement

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(ct held that E which had breached settlement agreement could not complain about stipulation of Bd's jurisdiction over E not being set aside when settlement agreement was dissolved; stipulation was freely entered into, never withdrawn, and still part of record in underlying ULP case; moreover E's accountant's testimony on E's gross receipts supported finding of jurisdiction)

3200 COMPLAINT

3212 GENERAL COUNSEL AUTHORITY OVER COMPLAINT

3212-1700 Final authority under Section 3(d) for issuance

Ace Beverage Co. **250 NLRB No. 066**
(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

3212-1750 Refusal to issue within administrative discretion

Chef's Pantry, Inc. **247 NLRB No. 018**
(matter alleged in charge but not alleged in complaint not considered as ULP issue since GC exercised his statutory authority to decline to issue complaint on matter which was clearly before him, and maintained that posture during hearing; however, conduct in question served as basis for objection to election which was sustained)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**
(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

3212-3300 Refusal to issue not reviewable by Board or courts

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(in dismissing action for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file complaint and to require him to do so, ct held that, unless ct can ascertain that GC acted in excess of his statutorily delegated authority, ct has no jurisdiction to require him to issue complaint, and case dismissed for want of jurisdiction, since Act is not so clear that ct can say with reasonable certainty that GC exceeded his delegated authority in ruling that state agency was not statutory E)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(ct affirmed district ct's dismissal of action by E association for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file requested complaint and to require him to file complaint; GC's refusal to issue complaint is ordinarily not reviewable by federal cts unless failure to act turns on mistake of law, and GC's opinion in instant case that state agency is not statutory E, and therefore proscriptions of Sec. 8(e) do not apply was not in excess of his statutorily delegated authority)

3212-6700 Theory of case determined by General Counsel

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

3225 FORM AND CONTENT OF COMPLAINT

3225-3300 Particularity not required

Pyromactics, Inc. **251 NLRB No. 141**
(E's mtn to dismiss complaint on ground that Ee's discharge was not specifically alleged as violation, denied; charge contained general 8(a)(1) allegation, and such charge is sufficient to support complaint alleging discharge of Ees in violation of Sec.8(a)(1); pleading of all the evidence in the charge is not required)

3225-9000 Defective complaints

Flair Molded Plastics, Inc. **250 NLRB No. 017**
(typographical error in C allegation which did not obscure sense or meaning of C does not prejudice Respondent and C valid)

3237 RELATIONSHIP TO CHARGE

3237-3300 Legally sufficient relationship between subject matter of charge and complaint only requirement

Levingston Shipbuilding Company **249 NLRB No. 001**
(mtn to strike allegation of unlawful interrogation, denied; evidence of interrogation was uncovered during Bd's investigation of charge that E discharged Ee for U organizing activity, and interrogation was closely related

3237-3300—Cont.

to charge where it was part of E's conduct during dischargee's organizing activity; moreover E responded to C and did not object to testimony on the subject)

3250 VARIANCE BETWEEN COMPLAINT AND CHARGE, PROOF, OR FINDINGS

Charmer Industries, Inc. **250 NLRB No. 031**
(where charge and C alleged that Es unilaterally changed procedures for collecting c.o.d. payments by having salesmen replace delivery drivers, represented in another unit, in making collections, ALJ rejected Es' contention that C was barred under Sec. 10(b) on ground that change itself came about through bargaining regarding duties of drivers and that, since neither charge nor C alleged unlawful failure to bargain about effects of change upon working conditions of salesmen, there was a variance between allegations and proof which required dismissal of proceeding)

Chef's Pantry, Inc. **247 NLRB No. 018**
withdrawal of objection to election did not preclude consideration of refusal to bargain allegation, or any conduct alleged in remaining objections which relates to it; pleadings fully apprised E of matters to be litigated and GC opened no *new areas* at hearing which were not covered by amended consolidated complaint, extant charges upon which it was based, and objections to be heard)

3250-3300 Complaint may allege ULP's not set forth in charge

Southwest Research Institute **JD(SF)-276-79**
(E's contention that issue of Ee questionaire was beyond jurisdiction of this tribunal rejected, since, notwithstanding absence of allegations in the charge concerning questionaire, such allegations were included in complaint, E's answer addressed itself to the issue, and E did not object to receipt of evidence regarding questionaire, but cross-examined GC's witnesses and called witnesses of its own, fully litigating issue)

3250-3333 If of similar nature

American Pistachio Corporation **249 NLRB No. 174**
(no finding of violation where GC did not allege conduct in C, did not add it by amendment at trial, and did not make any allegation in C broad enough to encompass it; and respondent was not put on notice that conduct was in issue)

Charge Card Association **247 NLRB No. 119**
(mtn to amend complaint denied where in prior related case that particular charge was withdrawn and moreover in instant case there is no conduct to support similar charge)

3262 AMENDMENTS TO COMPLAINT

3262-3300 Time of amendment

3262-3350 During hearing

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(amendment of C to allege additional violation proper where sufficiently related to allegations in original C notwithstanding would otherwise be outside 10(b) period)

3262-3362 After hearing

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(GC's request in his brief to Bd for additional 8(a)(1) finding denied where issue not litigated at hearing and Respondent had no notice that legality of its conduct was in question, and thus did not defend against it; mtn to conform pleadings to proof is insufficient to add to C new allegation of specific unlawful conduct)

The Nestle Company **248 NLRB No. 106**
(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Ee, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

L. R. **Bob** *Spillers Painting Co.* **JD-(SF)-169-80**
(when GC amends C after hearing and only bare *prima facie* case has been presented during hearing this is not enough to support violation as issue has not been fully litigated because Respondent had no opportunity to present defense)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(Bd properly allowed to amend C after hearing to allege violation based on E's use of application forms which contained questions as to Ee's U activities where substantial amount of testimony concerning use of these forms presented at hearing)

3275 AMENDMENT TO CONFORM PLEADINGS TO PROOF

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(GC's request in his brief to Bd for additional 8(a)(1) finding denied where issue not litigated at hearing and Respondent had no notice that legality of its conduct was in question, and thus did not defend against it; mtn to conform pleadings to proof is insufficient to add to C new allegation of specific unlawful conduct)

3282 AMENDMENT TO INCLUDE ULP'S FULLY LITIGATED

The Nestle Company **248 NLRB No. 106**
(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Ee, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(mtn by charging party, not joined by GC, to amend complaint to allege violation of 8(a)(3) by January and March layoffs, denied, since neither month's layoffs was fully litigated as 8(a)(3) violation where only failure to bargain over March layoff decision had been alleged)

Vitco Steel Supply Corp. **JD-103-80**
(GC's request that E be found to have conditioned future bargaining on U's withdrawal of ULP charges denied as not fully litigated, notwithstanding E's having introduced testimony to contrary, where U failed to amend complaint to include allegation after ALJ's comments had put GC on notice that E might have violated Act in this way)

3298 DISMISSAL OF COMPLAINT

B. N. Beard Company **248 NLRB No. 016**
(although it would have been better if ALJ had issued decision setting forth his reasons for dismissal of complaint, Bd held failure to do so was nonprejudial error and remand in compliance with R/R Sec. 102.45 unnecessary, where ALJ set forth on the record his reasons for dismissing complaint, GC had fully argued merits of dismissal, and no party has requested remand for purpose of issuance of decision)

Actors' Equity Association **247 NLRB No. 172**
(allegations in amendment to complaint concerning invalidity of U security provisions dismissed, where RD's prior determination of mootness had not been abandoned for any substantive reason, there was no more apparent reason for remedial order now than when original complaint issued, and there is no other apparent purpose to be served by deciding merits of issue)

3600 NOTICE OF HEARING

Lighthouse For The Blind of Houston **248 NLRB No. 178**
(lack of notice in formal C held nonpreducial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

Lighthouse For The Blind of Houston **248 NLRB No. 178**
(lack of formal notice of hearing at initial issuance of C, while not preferable, does not, w/o more, constitute denial of due process or subversion of rulemaking process)

4000 ANSWER TO COMPLAINT

4017 TIME FOR FILING

4017-6700 Effect of late filing

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**
(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive jurisdiction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

Hillcrest Packing Co., Inc. **247 NLRB No. 187**
(Respondent's reason for its untimely filing of answer to complaint does not meet *good cause* standard where asserted reason is failure of its attorney to file but Respondent itself had notice that no answer had been filed and had itself promised to file answer)

Mahler Sales Co., Inc. **JD-(SF)-312-79**
(in rejecting GC's contention that statute of limitations began running when U became aware of unilateral change at time E gave U Ee handbook, ALJ dismissed complaint because it was not timely filed where initial change occurred to U knowledge more than six months prior to filing)

4033 EFFECT OF FAILURE TO FILE

Urban Laboratories, Inc. **249 NLRB No. 116**
(where E was acting *pro se* and failed to ans C, allegations deemed admitted; moreover, fact that E is not attorney does not constitute good cause for failure to file timely ans)

4033—Cont.

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(mtn for summary judgment granted where one of 2 respondents had filed ans to original C but neither respondent had filed ans to amended C)

Kirila Contractors, Inc. and Joseph J. Defiore, d/b/a Joseph J. Defoire, Builders **247 NLRB No. 063**
(motion for summary judgment granted where respondent failed to request extension of time to file answer and then ignored Region's offered extension of time)

4067 SUFFICIENCY OF FORM AND CONTENT

American Steel Line Co. **249 NLRB No. 053**
(where Respondent answered C with letter, Regional Office asked Respondent if letter constituted ans and Respondent never replied; letter held improper anw as it does not specifically admit, deny or explain each of facts alleged in C)

4067-2500 Particularity required

Varco Phono Parts Corp. **250 NLRB No. 153**
(E's letters purporting to be answers to C held inadequate and not in compliance with Bd's R/R Sec. 102.20, since they did not specifically admit, deny, or explain C allegations; even assuming letters constituted proper answer, they admitted facts which established a violation and raised only matters which may more appropriately be raised at compliance proceeding)

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**
(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4067-5000 Sufficiency of statement of defense

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**
(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4067-7500 Adequacy of general denial

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**
(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4075 STRIKING OF FALSE, FRIVOLOUS OR SHAM ANSWER

M.H.T. Corporation, d/b/a Dollar Rent-A-Car **250 NLRB No. 168**
(jurisdictional facts admitted in prior R case and fact of receipt of request to bargain admitted in instant C case)

4079 STRIKING OF UNRESPONSIVE AND IMMATERIAL PORTIONS OF ANSWER

Hoosier Energy Division of Indiana Statewide Rural Electric Cooperative, Inc. **247 NLRB No. 011**
(GC's motion to strike portions of answer and amended answer denied, notwithstanding defenses raised therein do not raise meritorious defense to allegations of complaint, since defenses could be viewed as endeavor of Respondent to preserve position)

4400 CONSOLIDATION AND SEVERANCE OF PROCEEDING

4425 PROCEEDINGS CONSOLIDATED

4425-6700 Consolidation of CA and election objections proceedings proper

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(where R case consolidated with C cases for limited purpose of taking evidence on challenged ballots, RD ordered to open ballots of Ees held eligible and issue certification if U received majority, where U never filed objections to election, notwithstanding E held to have committed ULPs)

4450 CONSOLIDATION CRITERIA

4450-3300 Appropriate where

4450-3350 Same respondent

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(mtn to consolidate denied where cases involve different units of Ees and different factual backgrounds which are best treated separately notwithstanding same E)

4450-6700 Inappropriate where

4450-6717 Different issues

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(mtn to consolidate denied where cases involve different units of Ees and different factual backgrounds which are best treated separately notwithstanding same E)

4450-6725 Decision in one case already issued

Sullivan Transfer Co. **247 NLRB No. 117**
(consolidation not appropriate where Sec. 8(b)(4)(D) conduct did not occur before E engaged in alleged Sec. 8(a)(3) conduct, additionally two separate proceedings were already held and 10(k) proceeding was already pending before Bd when ALJ's decision issued)

4450-6775 Proceedings tried separately

Sullivan Transfer Co. **247 NLRB No. 117**
(consolidation not appropriate where Sec. 8(b)(4)(D) conduct did not occur before E engaged in alleged Sec. 8(a)(3) conduct, additionally two separate proceedings were already held and 10(k) proceeding was already pending before Bd when ALJ's decision issued)

4475 SEVERANCE OF PROCEEDINGS

4475-3300 Appropriate where

Hedison Manufacturing Company **249 NLRB No. 096**
(Bd severed and remanded discharge cases to ALJ for supplemental decision, where ALJ erred in precluding E's witnesses, whose testimony was relevant to events surrounding discharges, from testifying because E's official had refusal to comply with subpoena and to testify)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(where ALJ erred in dismissing 8(a)(5) allegation that E unlawfully changed job classifications and rates of pay after election herein but before outcome of election had been determined and record shows that changes did occur but fails to show compelling economic considerations, Bd ordered C alleging unlawful changes be severed from proceedings and final disposition be postponed until outcome of election is resolved)

4800 INTERVENTION

4801 GENERALLY

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(U's mtn to intervene in summary judgment proceeding against respondent U on ground U was authorized representative of Ees involved by reason of Joint Council's decision, denied; Joint Council decision is not binding on Bd, U does not claim to represent Ee majority in unit, granting mtn would undermine Bd's authority to determine scope of unit and would fragment unit, E never approved or was party to Joint Council proceeding, and respondent U's assertion of jurisdiction over Ees herein was not claimed to be unlawful)

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(where U did not learn of Motion for Summary Judgment or Notice to Show Cause until 1 day after deadline for receipt of responses, and inasmuch as only minor 1-day delay was involved, Bd accepted U's documents and treated its mtn to entervene on the merits)

5200 DISCOVERY

5600 DEPOSITIONS

6000 SUBPOENAS

6060 REVOCATION

6060-6700 Grounds for revocation

6060-6725 Rule 102.118

Central Freight Lines, Inc. **250 NLRB No. 063**
(*subpenas duces tecum* served on RD and field examiner *revoked* on mtn of GC, since GC had not given his written consent to RD and field examiner to produce documents described in subpenas, or to appear at trial and testify; documents sought had no probative value; *Section 102.118 of Bd's R/R* precluded production of documents described in *subpenas duces tecum*)

6060-6735 Immaterial to case

Central Freight Lines, Inc. **250 NLRB No. 063**
(*subpenas duces tecum* served on RD and field examiner *revoked* on mtn of GC, since GC had not given his written consent to RD and field examiner to produce documents described in subpenas, or to appear at trial and testify; documents sought had no probative value; *Section 102.118 of Bd's R/R* precluded production of documents described in *subpenas duces tecum*)

6060-6750 Claim of privilege

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**

(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

6400 STIPULATION AND TRANSFER TO BOARD

6800 SUMMARY JUDGMENT

6801 GENERALLY

Charmer Industries, Inc. **250 NLRB No. 031**
(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

Lighthouse For The Blind of Houston **248 NLRB No. 178**
(lack of notice in formal C held nonpreducial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

6801-5000 Board authority to use summary procedure

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**
(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive jurisdiction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

6833 NOTICE TO SHOW CAUSE PROCEDURE

Varco Phono Parts Corp. **250 NLRB No. 153**
(E's response to show cause held not to constitute good cause for failure to file proper answer w/i meaning of Bd's R/R Sec. 102.20, where response did not deny commission of any ULPs and, therefore, allegations of C stood uncontroverted, and response did not explain why E failed to contact RD concerning an answer or extension of time for filing an answer)

Sierra Vista Hospital, Inc. **249 NLRB No. 067**
(where Bd had denied E's mtn to revoke certification in companion case in which E failed to produce any evidence pertaining to conflict of interest as result of supervisory participation in positions of authority in nurses' association, and GC's mtn for summary judgment was still pending in instant case, Bd ordered that cause be shown why Bd should not now issue second supplemental D/O granting GC's mtn for summary judgment)

6867 CIRCUMSTANCES OF USE

6867-3300 In absence of answer

American Ham Company, Inc. **251 NLRB No. 194**
(where E failed to answer backpay specification and had not offered any explanation for failure to do so, allegations of specification deemed to be true and so found by Bd w/o taking of evidence in support of allegations)

D. V. Copying and Printing, Inc. **250 NLRB No. 005**
(summary judgment granted where respondent failed to submit timely ans notwithstanding on last date to file ans respondent requested extension because respondent failed to show proper cause; moreover, fact that respondent now alleges that its counsel and his secretary were both ill at time ans due not determinative as it should have been alleged at that time)

Medallion Automotive Systems, Inc. **249 NLRB No. 131**
(allegations of amended complaint deemed admitted and found to be true where after E's attorney advised counsel for GC that E was no longer functioning and that bankruptcy proceedings were being planned, E failed to file answer to amended complaint despite warnings by counsel for GC of consequences, and E further failed to file response to notice to show cause)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(mtn for summary judgment granted where one of 2 respondents had filed ans to original C but neither respondent had filed ans to amended C)

Fieldston Ambulance

6867-3325 Where answer untimely filed

Varco Phono Parts Corp. **250 NLRB No. 153**
(summary judgment granted where E failed to file acceptable answer w/i 10 days from service of C, or w/i extended time afforded it by RD, and no good cause for E's failure to do so was shown; consequently, allegations of C are deemed to be admitted true)

6867-6700 Where issue has or could have been previously resolved

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(mtn for summary judgment granted where all issues raised by E were or could have been litigated in prior R proceeding, E does not offer to adduce at hearing newly discovered or previously unavailable evidence nor allege any special circumstances which would require Bd to reexamine R-case decision)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(E's mtn for summary judgment based on E's claim that charging party had refused E's unconditional offer of reinstatement, denied since issue of whether E in fact made unconditional offer of reinstatement had not yet been resolved and case involved other issues which had been resolved contrary to E)

6867-6705 Jurisdiction

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

6867-6712 Failure to refer Region's investigatory file

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

6867-6725 Unit determination

Big Y Foods, Inc. **251 NLRB No. 123**
(E's contention that Bd had not fulfilled its statutory duty to make unit determination in its Decision and Direction of Elections and summary judgment fails because of new issue that could not have been previously raised held w/o merit; Bd had found that either Unit A *or* Unit B was appropriate, and therefore affirmative duty placed on Bd by Sec. 9(b) was not violated by allowing Ees to express their desires in elections)

Colorado Aggregate Company, Inc. **250 NLRB No. 169**
(concerning Ees of two separate and distinct facilities of E)

6867-6750 Failure to hold hearing on objections to election

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**
(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with no quasi about it, concerning which cts should not interfere save for the most glaring discrimination or abuse* however, if party demonstrates by prima facie evidence existence of *substantial and material factual issues which if resolved in its favor, would require setting aside election* hearing is required)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(enforcement denied where Bd improperly granted summary judgment in ULP case despite E's showings of atmosphere of fear and coercion that would tend to interfere with election and possible *Savair* violations; hearing was required on E's objections)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him

6867-6750—Cont.

toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. Hy-Lond Enterprises, Inc., d/b/a Hy-Lond Convalescent Hospital **Dkt. No. 78-1713 (C.A. 9, March 21, 1979 (unreported))**
(failure to hold evidentiary hearing on E's objections to elections did not deny E right to due process of law)

6867-6766 Objection to conduct affecting election

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **248 NLRB No. 045**
(granting GC's mtn for summary judgment, held warranted even if GC neglected to affix to copy of mtn mailed to E U's letter requesting recognition and E's response thereto, since E had possession of the two documents)

6867-6800 Failure to litigate present allegations in prior proceeding

Maremont Corp. World Parts Division **249 NLRB No. 043**
(E's mtn for summary judgment on ground that GC's failure to litigate instant allegations known to him at time of earlier hearing, precluded GC from litigating such allegations herein, denied; although aware of such allegations, GC was not therefore compelled to litigate allegations in prior proceeding, or not at all; there was no attempt to relitigate factual matters previously litigated under different provision of Act, alleged violations in both proceedings were not roughly concurrent, and there was no settlement agreement precluding litigation of presettlement conduct known to GC at time of execution of settlement).

Maremont Corp. World Parts Division **249 NLRB No. 043**
(E's mtn for summary judgment on ground that GC's failure to litigate instant allegations known to him at time of earlier hearing, precluded GC from litigating such allegations herein, denied; instant case does not subject E to unnecessary harassment since GC attempted to litigate allegations herein in earlier proceeding but ALJ denied mtn to amend C; having sufficient notice to prepare case herein, E may not now successfully argue that it has been prejudiced; and E's argument, if accepted, would severely restrict GC's legitimate exercise of discretion in expeditious litigation of outstanding Cs)

6867-8400 Where no factual dispute

W. F. Hall Printing Company **250 NLRB No. 122**
(mtn for summary judgment granted where it is admitted that E sent Ees letter, using language substantially same as that which has recently been found unlawful, requesting them to refuse to sign U authorization cards and also to report to E if any Ee harrassed them about signing U authorization cards)

Colony Printing and Labeling, Inc. **249 NLRB No. 002**
(and there was no matter in issue that required hearing before an ALJ; statements, admittedly made by E, constituted ULPs)

6867-9500 Backpay proceeding

D. V. Copying and Printing, Inc. **250 NLRB No. 005**
(summary judgment granted where respondent failed to submit timely ans notwithstanding on last date to file ans respondent requested extension because respondent failed to show proper cause; moreover, fact that respondent now alleges that its counsel and his secretary were both ill at time ans due not determinative as it should have been alleged at that time)

Chemtronics, Inc. **250 NLRB No. 006**
(back pay specification deemed admitted as true and GC's mtn for summary judgment granted since ans not timely nor sufficient in form or content where 11 months from service of purported ans due in part to numerous extensions to allow E to obtain new labor counsel, and 5 months after E aware of its counsel's failure to file ans response was not ans prepared by new counsel but affidavit by E's vice-president)

6884 DISMISSAL OF COMPLAINT

Pyromactics, Inc. **251 NLRB No. 141**
(E's mtn to dismiss complaint on ground that Ee's discharge was not specifically alleged as violation, denied; charge contained general 8(a)(1) allegation, and such charge is sufficient to support complaint alleging discharge of Ees in violation of Sec.8(a)(1); pleading of all the evidence in the charge is not required)

7000 JUDGMENT ON THE PLEADINGS

V. Pangori

7200 ALJ's QUALIFICATION AND AUTHORITY

7250 QUALIFICATION REQUIREMENTS

7250-5000 Disqualification for bias and prejudice

Schorr Stern Food Corp. **248 NLRB No. 050**
(although documents pertaining to correspondence between respondent and RD, and also internal memorandum between GC and RD, had erroneously been placed in *formal* instead of *informal* case file, Bd held backpay proceeding before ALJ was not prejudiced as result, and did not require ALJ to disqualify himself from case or to dismiss backpay specification; documents were either not relevant to backpay proceeding or were otherwise not prejudicial, and E's counsel was given full opportunity at hearing to examine documents)

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**
(contention that ALJ in original hearing should be disqualified because of bias and prejudice from participation in supplemental hearing, and that hearing de novo should be held before different ALJ, rejected)

7250-5020 Bias must appear on face of record

Redlands Christian Migrant Association **250 NLRB No. 027**
(respondent's contention that ALJ was biased as result of its refusal to settle case rejected in view of lack of conduct by ALJ showing improper attempt to secure settlement or of indication in his findings and conclusions that he prejedged case or showed bias)

7250-5040 Intemperate language

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(no impropriety, bias and lack of due process evidenced by ALJ's failure to credit testimony of E's witnesses and his use of words and phrases that are incisively descriptive and damning to E; ct's reading of cold record did nothing to instill confidence in testimony of E's witnesses, and substantial evidence supports finding that E's firing of U activists was particularly petty and vindictive)

7250-5050 Improper conduct of hearing, credibility resolution or inferences

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(ct held E did not receive fair and impartial hearing where during hearing ALJ made several inexcusable and injudicious attacks upon E's president, one of which was particularly directed to his ethnic background, which could not but taint entire proceeding)

7250-5060 Resolution of all issues against respondent not evidence of bias

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(no impropriety, bias and lack of due process evidenced by ALJ's failure to credit testimony of E's witnesses and his use of words and phrases that are incisively descriptive and damning to E; ct's reading of cold record did nothing to instill confidence in testimony of E's witnesses, and substantial evidence supports finding that E's firing of U activists was particularly petty and vindictive)

7600 HEARING

7601 GENERALLY

The Saloon, Inc. **247 NLRB No. 156**
(GC's contention that, in addition to alleged violations, certain other violations should be found, based on evidence adduced during trial, rejected, since it would be unfair inasmuch as respondent was never put on notice that such conduct was under scrutiney)

7612 CONTINUANCE OF HEARING

7612-3300 Discretionary with ALJ

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

7612-6700 Grounds for continuance

7612-6767 Insufficient

7612-6767-4500 Obtaining evidentiary records for hearing

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**
(E's motion for continuance to obtain criminal record of witness for impeachment purposes, denied, where issue was first raised at original hearing,

7612-6767-4500—Cont.

E had ample opportunity prior to supplemental hearing herein to obtain such record, and further delay in instant hearing is unwarranted)

7612-6767-5000 Engagement of counsel in other proceeding

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(due process not denied where hearing proceeded w/o Respondent's labor counsel when counsel failed to appear at hearing w/o submitting timely written request for second continuance and w/o justifying giving precedence to other matter, and at subsequent reconvening of hearing failing to appear w/o any previous form of request for continuance)

7612-6767-8700 Grounds created by party's own action

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(continuance to prepare defense denied where factual basis for GC's amendment arose from materials submitted by Respondent in response to *subpoena duces tecum* and Respondent cannot claim surprise as to legal implications of requested documents)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(where Respondent's counsel withdrew from case 14 days prior to hearing continuance denied because withdrawal caused by fact that counsel also represented co-defendant in case and defendants had created this untenable situation themselves)

7625 SEPARATION OF WITNESSES

7625-3300 Discretionary with ALJ

Local Union 633, Plumbers (B

7637 EXAMINATION OF WITNESSES

7637-0100 Generally

Arizona Public Service Company **247 NLRB No. 054**
(ALJ's ruling sustaining GC's objection to question to U representative by E's counsel at hearing regarding what U's bargaining posture would have been had E not refused to bargain over mandatory subject of subcontracting of unit work held not prejudicial to E's defense, since inquiry was directed at subjective intentions of U's negotiators about a proposal which they never tendered to E)

7637-3300 Leading questions

Stanley M. Feil, Inc. **250 NLRB No. 065**
(*reliability of answers to questions is enhanced when the questions are nonleading and simply put to witness so as to elicit exactly what was said. Such has resulted in procedural requirements that witnesses be questioned in a nonleading manner, even on cross-examination, before leading questions can be used*)

7650 PRODUCTION OF STATEMENTS OF WITNESSES

7650-2000 What constitutes statement

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**
(Bd agent writing something while witness spoke and nothing more did not qualify as statement w/i R/R 102.118(d))

7650-4000 Producible only after witness has testified

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

7662 CONDUCT OF HEARING BY ALJ

7662-1400 Rulings on motion

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(respondents' mtn to postpone trial denied absent showing of good cause therefor and in view of scheduling of trial date 4 months before, respondents' failure to file ans to GC's amended C, and GC's counsel's own commitments and preparation for trial in other cases)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(exceptions to ALJ's denial of E's mtn to dismiss complaint and objection because of participation on behalf of charging party by individual who was regional Bd Ee at time of representation ptn and charge, and subsequently joined law firm of counsel for charging party; his participation was minimal and not shown to have prejudiced E's rights)

7662-2800 Rulings on objections

Bide-A-Wee Home Association **248 NLRB No. 110**
(E's exception to ALJ's rulings overruled, as Bd found that rulings were correct and that E had failed to show prejudice thereby where E's purpose was only to show more of Ee's U activity than it had already shown, and result would have been same)

7662-4200 Exclusion or admission of evidence

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where E failed to produce evidence in response to subpoena but then during trial introduced material based on that evidence, admission proper where GC examined materials at start of hearing and had opportunity to examine list after it was intorduced into evidence)

Carbonex Coal Company **248 NLRB No. 107**
(charging party's mtn to strike factual allegations of Respondent's exceptions based on certain exhibits which ALJ had refused to accept into evidence denied because Respondent had excepted to evidentiary rulings and having done so may present arguments based upon such exhibits notwithstanding GC and charging party were not able to cross examine witnesses concerning disputed exhibits)

Sparkie's Special Delivery

Atlanta Baking Company, Inc. **JD-288-80**
(ALJ reaffirmed rejection of respondent's exhibits showing that RD had declined to issue C after investigating charges against respondents similar to those herein,. since GC has exclusive authority to issue Cs, so that RD's dismissal of similar charges was not *res judicata*, and the exhibits thus contained no probative evidence applicable herein)

7662-8400 Control of conduct of counsel

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(ALJ refused to countenance conduct of respondent's attorney who engaged in such tactics as preventing Bd from exercising its statutory authority, engaged in unwarranted attacks upon Bd personnel, and engaged in other conduct for purpose of inducing error into record upon appeal; due process suffered at hands of one who was most plaintiff in demanding it)

7662-9200 Misconduct by Administrative Law Judge

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(ct held E did not receive fair and impartial hearing where during hearing ALJ made several inexcusable and injudicious attacks upon E's president, one of which was particularly directed to his ethnic background, which could not but taint entire proceeding)

7682 PROCEDURAL DUE PROCESS AT HEARING

7682-3300 Due process not denied by

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(respondent not denied due process by nature of hearing on remand from court, since it had ample opportunity to present its evidence and rebut testimony and failed to meet its burden of showing any prejudice to its substantive rights by GC's active participation in the hearing, even if such was departure from his customary role in proceedings of this kind)

7682-3305 Refusal to allow substitution for employer's designated representative

I/O Optics Limited, U.S.A. **251 NLRB No. 037**
(ALJ did not abuse discretion in not permitting E's designated representative to participate in hearing and assist E's counsel in preparation of defense pursuant to Rule 615 of Federal Rules of Evidence, or in not adjourning hearing until representative would be available, where individual originally designated was unable to participate and ALJ refused to allow another designated representative to participate as requested by E because second individual had been sequestered as witness as problem was E's own creation)

7682-3335 Refusal to sequester witness

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(ALJ's failure to sequester discriminatee during testimony of other discriminatee not prejudicial error where hearing was conducted prior to *Unga Painting Corp.* 237 NLRB 1306, in which Bd held absent special circumstances mtn to sequester should be granted when a discriminatee is testifying about events as to which another discriminatee has, will or may testify; under rules in effect at time of hearing ALJ was w/i discretion in refusing to sequester discriminatee)

Local Union 633, Plumbers (B

7682-3349 Absence of party's counsel at hearing

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(due process not denied where hearing proceeded w/o Respondent's labor counsel when counsel failed to appear at hearing w/o submitting timely written request for second continuance and w/o justifying giving precedence to other matter, and at subsequent reconvening of hearing failing to appear w/o any previous form of request for continuance)

7682-3356 Denial of motion to file reply brief

The Nestle Company, Inc. **251 NLRB No. 142**
(ALJ accepted and considered respondent's reply brief, notwithstanding GC correctly argued that Bd's R/R do not provide for submission of reply briefs, because GC was not prejudiced thereby)

7682-3363 Board rules and procedures

The Nestle Company, Inc. **251 NLRB No. 142**

7682-3363—Cont.

(ALJ accepted and considered respondent's reply brief, notwithstanding GC correctly argued that Bd's R/R do not provide for submission of reply briefs, because GC was not prejudiced thereby)

7682-3370 Limitation of examination of witnesses

Hedison Manufacturing Company **249 NLRB No. 096**

(Bd held ALJ, while fully warranted in precluding E's official from testifying because he refused to comply with subpoena and to testify, erred in precluding E from calling witnesses other than official; since E's asserted reasons for discharges involved herein must rest upon testimony of witnesses as to relevant events, *best evidence* rule involved in cases relied on by ALJ held not applicable to discharges; accordingly, Bd severed and remanded discharge cases to ALJ for supplemental decision)

Arizona Public Service Company **247 NLRB No. 054**

(ALJ's ruling sustaining GC's objection to question to U representative by E's counsel at hearing regarding what U's bargaining posture would have been had E not refused to bargain over mandatory subject of subcontracting of unit work held not prejudicial to E's defense, since inquiry was directed at subjective intentions of U's negotiators about a proposal which they never tendered to E)

7682-3384 Revocation of subpoena

Howard Johnson Company **250 NLRB No. 161**

(ALJ properly revoked E's subpenas directed to Bd's associate executive secretary seeking information regarding Bd decisions as to E's requests for review of RD's D/O directing election; since E did not actually receive from Bd copies of telegrams denying its requests for review, E was not prejudiced by revocation of its subpenas, and E made no claim that it had obtained prior written consent for disclosure of information as required by Bd's R/R)

Howard Johnson Company **250 NLRB No. 161**

(ALJ properly revoked E's subpenas directed to RD and U seeking authorization cards and related documents, even though ptns for revocation may not have conformed to Bd's R/R, where E was in no way prejudiced thereby, and material sought was irrelevant to issues herein since GC based C on U's winning of election and not on majority of authorization cards; moreover, E made no claim that it had obtained prior written consent for disclosure of official information as required by Bd's R/R)

7682-3391 Absence of specific allegations or notice where adequate notice exists

Lighthouse For The Blind of Houston **248 NLRB No. 178**

(lack of notice in formal C held nonpreducial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

7691 PARTICIPATION BY PARTIES

7691-5000 Introduction of documentary evidence

St. Regis Paper Company **247 NLRB No. 105**

(correct to draw adverse inference from Respondent's failure to submit documentary evidence in support of its contention that *transfer of work was economically motivated*)

8000 ALJ DECISION AND PROPOSED FINDINGS

8001 GENERALLY

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**

(where ALJ had failed to make critical credibility determinations regarding conflict in testimony of GC's witnesses--who claimed that on a certain date U and respondent E had reached oral agreement on terms of contract--and E's witnesses--who denied that such agreement was reached on that date--, Bd remanded proceeding for ALJ to make credibility determination regarding conflicting testimony)

Sparkie's Special Delivery

8001-3700 Board will not overrule ALJ's credibility resolutions unless contrary to clear preponderance of all relevant evidence (Standard Dry Wall Products)

Eastern Engineering

8001-4000 Decision must be based on record only

Service Garage, Inc. **247 NLRB No. 115**

(ALJ's finding of no U animus on E's part based on his observation of E and Ees during hearing but not while testifying is impermissible reliance on conduct not w/i record)

8001-4400 ALJ's failure to detail conflicts in evidence not indication that such evidence not considered

Kiawah Island Company, Ltd. **247 NLRB No. 050**

8001-4700 ALJ's resolution of important factual conflicts against party not bias

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No 118**

(allegation of bias based on ALJ's resolution of important factual conflicts in favor of witnesses testifying for U held w/o merit)

8001-4800 ALJ's substitution of his judgment for that of party

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**

(ALJ found, based on entire record, that surface bargaining charge had no merit; contrary finding would place ALJ in judgment upon substantive terms of collective bargaining agreement)

8001-5000 ALJ bound by Board precedent and dispositions

Howard Johnson Company **250 NLRB No. 161**

(ALJ held that Bd's denials of E's requests for review of RD's D/O directing election are binding on ALJ; E is free to request Bd to reconsider its determination and, in event of adverse decision, to seek ct review, but Bd's dispositions are not reveiwable by ALJ)

Charmer Industries, Inc. **250 NLRB No. 031**

(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

8075 VARIANCE BETWEEN FINDINGS AND COMPLAINT

8075-0100 Generally

Visu-Craft By H.B.S., Inc. **JD-887-79**

(E held to have violated Act by maintaining and enforcing unlawful security clause notwithstanding violation not alleged in complaint where legality of provision presented as matter to be considered at hearing and was closely related to allegations of unlawful assistance to U and unlawful discharge pursuant to provision)

8075-5000 Findings on issues fully litigated

Illinois Bell Telephone Company **251 NLRB No. 128**

Weyerhaeuser Company **251 NLRB No. 097**

(Bd and ALJ expected to pass upon issue although not specifically alleged to be ULP in complaint if matter was fully litigated)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**

(where issue is fully litigated at hearing it is not necessary that it have been specifically alleged in C for ALJ to make finding)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(Respondent not deprived of due process where threat not alleged in C held to be violation since allegation fully litigated)

8075-7500 Findings on issues not fully litigated

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**

(violation not found where GC did not allege claimed ULP in C nor advance it as theory of C and GC and E resolved issue by settlement agreement in prior, related proceeding)

8400 EXCEPTIONS AND BRIEFS

8433 EXCEPTIONS

8433-2500 Who may file

Land Equipment Inc. **248 NLRB No. 098**

(Bd did not disturb ALJ's description of unit absent exceptions thereto by either party notwithstanding intervenor's contention that description was incorrect)

8433-5000 Effect of failure to file or late filing

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**

(on ct remand, Bd affirmed ALJ's finding that U's general refusal to make referrals was not unlawful, where GC failed to litigate such issue; U was w/o adequate notice from hearing and briefs that refusal was issue as independent violation and was deprived of opportunity to present relevant defense evidence, GC also failed to comply wtih Bd's R/R by not filing specific exceptions concerning issue, and it would be difficult to infer that GC intended to maintain issue as part of theory of case as it was originally presented to Bd)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**

(where Respondent filed cross-exceptions and answering brief but Bd failed to receive them prior to its decision, Bd's original order rescinded in order for it to be able to consider those documents)

8433-6700 Form and specificity required

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(GC's exception to ALJ's dismissal of all allegations of complaint not found violations of Act lacked specificity required by Bd's R/R and was not adequate notice of request to consider issue of general refusal to refer which ALJ had found not unlawful; R/R Sec. 102.46(b))

Ditch Witch of Central Illinois, Inc. **248 NLRB No. 052**
(resubmitting to Bd brief that was originally submitted to ALJ is insufficient to place in issue any finding of ALJ that Bd can review in regards to specific *exceptions*)

8433-9900 Cross exceptions

Thermo King Corporation **247 NLRB No. 048**
(U's motion for special leave to file answering brief to E's cross-exceptions granted for limited purpose of answering questions raised in such exceptions; however, such brief not considered insofar as it exceeded scope of E's cross-exceptions (R/R Sec. 102.46(f)(1))

8467 BRIEFS

8467-0100 Generally

Ernst Construction, Div. of Ernst Steel Corporation **JD-826-79**
(where ALJ was informed that U's representative had not received copy of E's brief, ALJ, in absence of mtn to strike E's brief, reminded E's counsel of his obligation to forward copies of all post-hearing documents to all parties)

8500 RECORD IN UNFAIR LABOR PRACTICE PROCEEDING

8550 AUGMENTATION

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(mtn for leave to introduce new evidence denied where only effect of proffered evidence would be *only to circumstantially bear upon witness' credibility* which was not crucial to Bd's acceptance of ALJ's finding of violation)

8600 ORAL ARGUMENT

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 009**
(oral argument denied because record, exceptions, and briefs adequately represented issues and positions of parties)

8800 BOARD DECISION

8860 FINDINGS

8860-3500 Board not bound by its previous reasoning or decisions

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(while agency is free to change its policies as it determines are in public interest, it must supply reasoned analysis indicating why its departure from precedent)

8860-4100 Board not bound by ALJ recommendations

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

8860-8300 Disavowal of ALJ's statements

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(Bd disavowed ALJ's characterization of E as being myopic in her legal obligations but incapable of firing anyone for U related reasons where record showed E was capable of blatant discriminatory conduct)

8860-8700 Findings of cumulative violations not necessary where order on those found would provide adequate remedy for others alleged

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**

MGM Grand-Reno, Inc. **249 NLRB No. 153**

8860-9100 Variance between findings and complaint

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

8860-9150 Findings on issues fully litigated

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(violation where E failed to apply contract to all Ees in appropriate unit and failed after contract's expiration to continue to maintain provisions of contract or to bargain for a new contract covering all unit Ees while erroneously insisting that a large number of Ees were not included in unit; although failure to apply existing contract to all unit Ees was not alleged as violation, matter was fully litigated, since it and later violation both turned on question of who was in appropriate unit)

The Baughman Company **248 NLRB No. 186**
(exception to ALJ's finding of unlawful unilateral change in Ees' workweek on grounds that it was not alleged in C overruled, since matter was reasonably related to C's other allegations and was fully litigated)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against him* held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

8860-9175 Findings on issues not fully litigated

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(on ct remand, Bd affirmed ALJ's finding that U's general refusal to make referrals was not unlawful, where GC failed to litigate such issue; U was w/o adequate notice from hearing and briefs that refusal was issue as independent violation and was deprived of opportunity to present relevant defense evidence, GC also failed to comply wtih Bd's R/R by not filing specific exceptions concerning issue, and it would be difficult to infer that GC intended to maintain issue as part of theory of case as it was originally presented to Bd)

The Nestle Company **248 NLRB No. 106**
(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Ee, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

9000 COSTS AND FEES

9200 REOPENING OF RECORD AND REMAND

9233 CIRCUMSTANCES WARRANTING REOPENING OF RECORD

9233-0100 Generally

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(Bd abused discretion when it refused to reopen record to receive evidence of sale of facility since bona fides of E's intent to sell facility was central issue, actual sale w/i few months was highly relevant)

9233-3300 Previously unavailable evidence

ABC Trans-National Transport, Inc. **247 NLRB No. 025**
(mtn to reopen record denied where respondent failed to show that proffered evidence was unavailable at time of hearing)

9233-5000 Evidence previously presented but not considered

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

9233-6700 Newly discovered evidence

9233-6750 Must be such as to probably change outcome

Chef's Pantry, Inc. **247 NLRB No. 018**
(although it was error to reject U's proffer of evidence purporting to show that E violated Act, it was not necessary to reopen hearing to take proferred

9233-6750—Cont.

testimony since offer of proof showed that receipt of such evidence would not materially affect decision or remedy in the case)

9250 CIRCUMSTANCES NOT WARRANTING REOPENING OF RECORD

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**

(on ct remand to Bd for determination of whether U's general refusal to make referrals was not unlawful as found by ALJ, Bd held it would be improper exercise of its power to remand case for second hearing, since doing so would violate Bd procedures and Sec. 10(e) and would substantially delay resolution of case involving 24 proven discriminatees for almost 6 years in order to allow litigation of theory which GC had never properly advocated before Bd)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**

(E's mtn to reopen record to receive allegedly new, previously unavailable evidence of previously unavailable witness denied where E had failed to allege that witness was crucial to its case and E had failed to request continuance)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

(Bd denied respondent's mtn for leave to adduce additional evidence purportedly showing that one of its witnesses testified truthfully at hearing, since respondent had had opportunity to bolster witness's testimony when it was placed in issue at hearing, and Bd will not reopen record to admit evidence which merely relates to credibility)

American Pistachio Corporation **249 NLRB No. 174**

(mtn to reopen record for receipt of additional evidence denied where evidence was neither newly discovered nor unavailable at hearing; moreover it would not have affected result if accepted)

B. N. Beard Company **248 NLRB No. 016**

(although it would have been better if ALJ had issued decision setting forth his reasons for dismissal of complaint, Bd held failure to do so was nonprejudial error and remand in compliance with R/R Sec. 102.45 unnecessary, where ALJ set forth on the record his reasons for dismissing complaint, GC had fully argued merits of dismissal, and no party has requested remand for purpose of issuance of decision)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 006**

(mtn for remand to RD for taking further evidence denied because there was no adequate showing that proffered evidence was newly discovered or previously unavailable)

Actors' Equity Association **247 NLRB No. 172**

(U's mtn for leave to reopen record to adduce further evidence regarding certain issue and to file brief in response to issues raised in GC's exceptions and supporting brief denied, where U failed to show any extraordinary circumstances warranting reopening of record, and issue in question was considered at hearing and all parties had opportunity to present evidence relating thereto)

Tartan Marine Company **247 NLRB No. 073**

(mtn to reopen record to determine if bargaining order warranted on basis of Ee turnover, and lapse of time since ULPs, denied, notwithstanding dismissal of complaint in prior case in which E was Respondent)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(mtn at end of trial to reopen record to receive evidence of numerous measures taken by E *to assure compliance* with Act, which evidence assertedly was not proffered during hearing because available since that time, denied; evidence is of minimal relevance, it would not alter conclusions as to remedy, and it involves matters of general compliance with labor laws rather than substantive obligations; moreover, events took place well after operative misconduct and were not addressed specifically to its redress)

9258 REMAND FOR DE NOVO HEARING

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**

(contention that ALJ in original hearing should be disqualified because of bias and prejudice from participation in supplemental hearing, and that hearing de novo should be held before different ALJ, rejected)

9267 CIRCUMSTANCES WARRANTING REMAND

9267-3300 To receive additional evidence

Reliable Roofing Company, Inc. **250 NLRB No. 069**

(E's mtn for reconsideration granted to consider evidence relevant to Bd's finding that E unlawfully withdrew from multi-E bargaining; i.e., whether multi-E group actually existed or E's withdrawal privileged and further contention that compliance with resulting order would force E into bankruptcy, since E's submissions, if accepted as accurate, would be deemed sufficient to dismiss C)

Hedison Manufacturing Company **249 NLRB No. 096**

(Bd severed and remanded discharge cases to ALJ for supplemental decision, where ALJ erred in precluding E's witnesses, whose testimony was relevant to events surrounding discharges, from testifying because E's official had refusal to comply with subpoena and to testify)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**

(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

9267-6700 For additional findings

Savannah Wholesale Company **251 NLRB No. 087**

(where ALJ credited Ee to extent that he found E had knowledge of fellow Ee's U activity before latter was discharged, but ALJ did not resolve credibility issue as to whether statement indicating E's knowledge was actually a threat as alleged, Bd, being unable to make determination on 8(a)(1) allegation, severed such allegation and remanded to ALJ for appropriate findings)

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**

(where ALJ had failed to make critical credibility determinations regarding conflict in testimony of GC's witnesses--who claimed that on a certain date U and respondent E had reached oral agreement on terms of contract--and E's witnesses--who denied that such agreement was reached on that date--, Bd remanded proceeding for ALJ to make credibility determination regarding conflicting testimony)

Bullock's **247 NLRB No. 040**

(remand for further findings (1) as to whether dischargee had obtained information in Ees' performance evaluations innocently or wrongfully and whether such activity was therefore concerted and protected or not, (2) as to other alleged reasons for her discharge and (3) resolution of conflict between testimony of dischargee and other Ee so as to make determination as to whether discharge violated 8(a)(1))

9287 CIRCUMSTANCES NOT WARRANTING REMAND

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

(notwithstanding valid objection to election, because of delinquency on part of E to raise objection Bd did not abuse its discretion in refusing to reopen record)

9600 FURTHER CONSIDERATION, RECONSIDERATION OR MODIFICATION OF ORDER

9650 CIRCUMSTANCES WARRANTING RECONSIDERATION

9650-5000 Denied where all matters raised in motion had been previously considered

N.L.R.B. v. Lane Aviation Corporation **615 F.2d 759 (C.A. 6) (1980)**

(Bd erred in reopening case after it had issued decision where moving party did not adduce any previously unexamined evidence in support of their mtn to reopen since all issues suggested by affidavits attached to mtn were thoroughly explored before ALJ and at Bd's initial hearing nor were there allegations of supervening events or extraordinary circumstances as required under R/R 102.48(d); thus Bd contravened its own regulations which an administrative agency has no power to do)

9675 CIRCUMSTANCES WARRANTING MODIFICATION OF ORDER

Advance Pattern and Machine Corporation d/b/a Gibraltar Sprocket Company **JD-51-80**

(order requiring reinstatement of discriminatorily discharged strikers modified by agreement of parties to not require reinstatement of 2 strikers who engaged in picket line misconduct; hearing on issue unnecessary where parties resolved disputed questions)

9800 COURT REMAND

9900 OTHER PROCEDURAL MATTERS

600 REMEDIAL ORDER PROVISIONS

601 GENERALLY

2500 NATURE AND PURPOSE

2514 EFFECTUATION OF POLICIES OF ACT (10(c))

Independent Stave Company **248 NLRB No. 025**
(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**
(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See, *Fibreboard*, 379 US 203)

2556 REMOVAL, DISSIPATION, OR AVOIDANCE OF CONSEQUENCES OF ULPS

Southwestern Bell Telephone Company **247 NLRB No. 027**
(*modus operandi* for providing information on job vacancies filled and applications filed, unless parties otherwise agree in writing, enunciated in remedy provided by ALJ)

2570 RESTORATION OF STATUS QUO ANTE

Scott Printing Corporation **249 NLRB No. 134**
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante*, since contract of sale was *sham* transaction)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(where Bd finds discriminatory conduct, restoration of *status quo ante* is proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

2584 REMEDIAL, NOT PUNITIVE

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(punitive damages were not permitted under Railway Labor Act for U's breach of duty of fair representation)

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(fundamental purpose of fair representation suits is to compensate for injuries caused by violations of Ees' rights)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd's power to command affirmative action is remedial not punitive and is to be exercised in aid of Bd's authority to restrain violations and as means of removing consequences of violation which thwart purposes of Act)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(bargaining orders are always remedial and are designed to set matters as they would have been in absence of E's misconduct)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punative relief; injury was ambiguous)

3700 AUTHORITY OF BOARD

3701 GENERALLY

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd has broad latitude in ascertaining appropriate remedial measures, and its decision must be given *special respect*; ct will not disturb Bd's order unless it is patent attempt to achieve ends other than those which effectuate policies of Act)

3750 WHERE NO VIOLATION OF ACT

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(cab companies not liable for *dues and initiation fees which (U) - would have received* had it been recognized as representative of lessee-drivers, since companies committed no ULP in refusing to recognize U)

5000 SCOPE OF ORDERS

5025 BREADTH IN RELATION TO SPECIFIC VIOLATION

5025-0100 Generally

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(in exercising its great discretion in determining what curative measures are needed with respect to a particular violation, Bd may properly consider past conduct which may affect scope of effective remedy; however, remedial order is to be based on conduct found unlawful in current proceedings, and Bd is not empowered to monitor on continuing basis activities of E or U found to have committed ULPs or to impose on periodic basis additional requirements because of a past violation)

5025-3300 Broad orders

Keystone Steel

5025-3301 Generally

Patsy Bee, Inc. **249 NLRB No. 125**
(broad order issued in view of serious and egregious nature of violations)

Owen Joint Corporation **248 NLRB No. 076**
(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

5025-3332 Violation of fundamental employee rights

Owen Joint Corporation **248 NLRB No. 076**
(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(narrow injunctive order rather than broad order, appropriate where, although E's ULP included discharge of Ee because of his U activities, U had not been shown that E had proclivity to violate Act or had engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental rights)

5025-6700 Narrow orders

5025-6701 Generally

United States Postal Service **250 NLRB No. 156**
(narrow order substituted for broad order where E made threats of disciplinary action in violation of 8(a)(1))

Owen Joint Corporation **248 NLRB No. 076**
(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

5050 PERSONS BOUND BY ORDER

5050-1000 Persons not named in complaint

Sachs Electric Company **248 NLRB No. 092**
(neither E association nor E-member held liable for U's action in unlawfully requesting that members of sister Us, who had been referred out of U's

5050-1000—Cont.

hiring hall quit their jobs in favor of unemployed members of U inasmuch as complaint did not specify either one as respondent with respect to incident and their liability was not fully litigated)

5050-1500 Successor employers

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

5050-3400 Multi-employer association

Sachs Electric Company **248 NLRB No. 092**
(E association and E-member held not liable for U's unlawful conduct in discriminating against U members in matter of placement on exclusive hiring hall referral list where adequate safeguards were present in form of appeals committee arbitration procedure provided for in contract; consequently, Es had not turned over their hiring practices to U so as to subject themselves to absolute liability for all wrongful acts of U)

5050-3800 Members of multi-employer association

Sachs Electric Company **248 NLRB No. 092**
(E association and E-member held not liable for U's unlawful conduct in discriminating against U members in matter of placement on exclusive hiring hall referral list where adequate safeguards were present in form of appeals committee arbitration procedure provided for in contract; consequently, Es had not turned over their hiring practices to U so as to subject themselves to absolute liability for all wrongful acts of U)

5050-6200 Receiver or trustee in bankruptcy

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

5050-8300 Unions jointly engaged in ULP

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(international U held equally responsible with local U for violations because of status of international vice president as *trustee* of local, his awareness of and participation in local's discrimination involved in layoffs of Ees by E, and his condonation and ratification of such acts)

5075 TERRITORIAL SCOPE OF ORDERS

5075-3300 All of employer's construction

Wright

5087 TIME LIMITATION OF ORDER

Land Equipment Inc. **248 NLRB No. 098**
(order applying contract retroactively to date it was signed including period beyond 10(b) period, appropriate where respondent had actively attempted to conceal from U 1)existence of one company it had formed to supply labor to its other company with which U had contract and 2) fact that some Ees dispatched by U to latter company appeared on former company's payroll)

7500 AFFIRMATIVE DEFENSES

7560 GENERAL COUNSEL'S FAILURE TO REQUEST REMEDY

Arizona Public Service Company **247 NLRB No. 054**
(absent any request by GC for order requiring reinstatement of status quo ante in case involving unlawful refusal by E to bargain over subcontracting of unit work, and absent allegations or evidence of unilateral action by E, order requiring unit Ees to be *made whole* held unwarranted)

7590 MOOTNESS

7590-0900 Compliance with ALJ's decision or settlement agreement

United States Postal Service **JD-(SF)-273-79**
(settlement reinstated where complaint alleged conduct that occured before and after settlement agreement, and though all allegations fully litigated, finding of no violations relatinng to post settlement allegations established that E had fully complied with settlement agreement)

7590-3100 Discontinuance of illegal conduct

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(institution of new hiring hall procedures and referral system subsequent to issuance of complaint alleging operation of hiring hall in unlawful manner did not obviate need for remedial order since discontinuance of ULP does not dissipate ifs effect)

7596 CHANGED CIRCUMSTANCES

7596-2400 Bankruptcy

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

Shippers Interstate Service, Inc. v. N.L.R.B. **618 F.2d 9 (C.A. 7, 1980)**

7596-5200 Sale of business

Scott Printing Corporation **249 NLRB No. 134**
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante,* since contract of sale was *sham* transaction)

625 ORDERS AGAINST EMPLOYERS

1100 CEASE-AND-DESIST ORDERS

1133 OMNIBUS CLAUSES

1133-2500 Broad orders (in any other manner)

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(where unlawfully discharged Ee distributed letter derogatory to E after ALJ issued decision, Ee entitled to reinstatement as letter stated truth about his discharge and repeated his original offer to represent Ees concerning matters of common concern)

Brooks Cameras, Inc. **250 NLRB No. 116**
(broad order warranted in view of egregious nature of E's retaliatory conduct directed at Ees because of their U-related activities and its attempt through unlawful discharges to undermine and destroy U's representative status among unit Ees)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(appropriate where respondent's unlawful conduct, including interrogation and discharges of 5 Ees, was extensive and reached most of entire Ee complement)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

Standard Homes, Inc. **249 NLRB No. 146**
(broad order inappropriate absent showing of proclivity to violate Act, or egregious and widespread misconduct as to demonstrate general disregard for Ees' statutory rights)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(severe nature of E's discharges dissipating one-half of the unit, coupled with other violations, warrants broad injunctive relief--under *Hickmott Foods* analysis)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(nature of E's ULPs warranted issuance of broad cease-and-desist order under standards set forth in *Hickmott Foods* (directing Ees to observe and report on other Ees' U activities, violative))

Clinton Inn **249 NLRB No. 022**
(broad order not warranted)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(order warranted, in view of Es' misconduct that was widespread as to number of violations and egregious as to their nature)

1133-5000 Narrow orders (in any like or related manner)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**
(notwithstanding E's admissions in its brief and in testimony in defense of specific ULPs before ALJ that it discharged Ees who refused to recant their prior protected concerted activities and that it offered improper support of organizational activities by Ees, Bd found ALJ's broad order unwarranted where matters relied on by ALJ were inadequate to indicate proclivity to violate Act since they were neither alleged nor litigated as violations and E's admissions did not indicate that E would ignore statutory rights of its Ees in future)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(appropriate absent proclivity to violate Act or such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental rights)

Routh Packing Company, Inc. **247 NLRB No. 053**
(Bd order used narrow cease-and-desist language it traditionally provides to remedy 8(a)(3) and (1) violations)

1167 CEASE-AND-DESIST ORDERS RELATING TO SPECIFIC VIOLATIONS

Arizona Public Service Company **247 NLRB No. 054**
(E ordered to c/d from insisting on unlawful placing of limits on scope of bargaining over subcontracting of unit work)

1167-0100 Generally

Hedison Manufacturing Company **249 NLRB No. 096**
(notwithstanding unresolved question regarding alleged unlawful discharges, herein remanded to ALJ, Bd issued order requiring E to c/d from engaging in unlawful activity and to bargain with U, since resolution of remanded issue did not affect Bd's conclusion that E's extensive ULPs had tendency to undermine U's majority and to impede election process, where ULPs ranged from discriminatory layoffs, unlawful imposition of conditions for transfer of Ees, threats of reprisal, and acts of surveillance and coercive interrogation directed at substantial number of Ees)

1167-5000 Unilateral actions

Kraft Foods, Inc. **251 NLRB No. 006**
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

1167-6000 Section 8(e)

1167-6000 Section 8(e)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

1600 REPETITIVE ORDERS

1900 ORDERS TO ALLEVIATE EFFECT OF FRIVOLOUS LITIGATION

1933 WHAT CONSTITUTES FRIVOLOUS LITIGATION

Hospitality Motor Inn, Inc. (Hotel

Wellman Industries, Inc. **248 NLRB No. 029**
(E's positions regarding its refusal to bargain were twice rejected throughout course of litigation covering entire federal judiciary system, and its latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

1967 TYPES OF ORDER PROVISIONS (SEE ALSO 625-5570)

1967-4900 Reimbursement to union for organizational and negotiation expenses

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E must reimburse U for its bargaining expenses where E engaged in prolonged course of ULPs designed to thwart U's efforts to negotiate contract)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reinbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**

1967-4900—Cont.

(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse U for any excess organizing costs it reasonably incurred from date E willfully flouted its lawful duty to recognize U)

1967-5600 Reimbursement of litigation expenses (See also 625-5570)

Charmer Industries, Inc. **250 NLRB No. 031**
(circumstances insufficient to support allegation of frivolous litigation so as to warrant requiring respondent Es to bear costs of litigation herein)

Standard Homes, Inc. **249 NLRB No. 146**
(reimbursement of U and Bd for litigation costs not awarded where respondent's defense of its conduct were not patently frivolous)

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reimbursement order)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse Bd and U for all litigation expenses, relating to meritorious ULP allegations and reasonably incurred as result of lengthy proceeding herein where, as in past, E reacted to organizing attempt by engaging in surveillance, creating impression thereof, promising and granting benefits, and unlawfully interfering with organizing campaign)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(disavowing ALJ's characterization of order requiring E to pay Bd and U litigation costs as *traditional in Stevens cases*, Bd noted that it reviews all cases on their merits and grants or denies remedies based on record as a whole)

1967-7000 Reimbursement to union of lost initiation fees, dues, etc. (See also 625-5596)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(cab companies not liable for *dues and initiation fees which (U) - would have received* had it been recognized as representative of lessee-drivers, since companies committed no ULP in refusing to recognize U)

1967-8400 Reimbursement to employees for lost benefits

Campo Slacks, Inc. and J

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punative relief; injury was ambiguous)

1967-9999 Other

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(request that order include imposition of *interim grievance procedure* whereby E is required to reduce to writing all its existing terms and conditions of employment and to discuss and process Ee grievances denied for reasons stated in *J. P. Stevens, 239 NLRB No. 95*)

2200 ORDERS RELATING TO AGREEMENTS

2233 INVALIDATION OF CONTRACTS

2233-0900 Contracts with dominated or unlawfully assisted unions

Baine Service Systems, Inc. **248 NLRB No. 087**
(cease giving effect to and cancel contract entered into by E and U which lacked majority status)

2267 ORDERS CONCERNING CONTRACTUAL BENEFITS

2267-6700 Make employees whole for loss of benefits

Pullman Building Company **251 NLRB No. 145**
(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(Bd left to compliance stage question of whether E must pay additional amounts into various funds in order to satisfy make-whole remedy since provisions of Ee benefit fund agreements were variable and complex and Bd did not provide at adjudicatory stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments)

The Saloon, Inc. **247 NLRB No. 156**
(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

2291 ORDERS CONCERNING BENEFITS UNLAWFULLY WITHHELD

Independent Stave Company **248 NLRB No. 025**
(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

3300 REINSTATEMENT ORDERS

3301 GENERALLY

Babcock

Lion Uniform, Janesville Apparel Division **247 NLRB No. 123**
(reinstatement order to remedy Sec. 8(a)(3) violation proper notwithstanding it imposes financial burden on E because E's unlawful conduct is root cause of burden and it and not Ees should bear burden)

3317 ENTITLEMENT OF EMPLOYEES TO REINSTATEMENT

3317-0100 Generally

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**
(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See, *Fibreboard*, 379 US 203)

3317-0900 Discriminatees

Southwestern Bell Telephone Company **251 NLRB No. 061**
(reinstate discharged Ee where information leading to discharge obtained during interview at which Ee was unlawfully denied his *Weingarten* rights; notwithstanding Ee confessed to theft of company property during interview as E relied solely on confession in making his decision)

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

3317-1700 Economic strikers

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

3317-1700—Cont.

C-F Air Freight, Inc. **247 NLRB No. 060**
(defense to order requiring reinstatement and backpay based on assertion that order was *unfair* and unjustified and that participation of Ees in strike herein, which was basis for other ULP cases brought against U and were subject of settlement agreements, was tantamount to Ees' ratification of U's alleged misconduct which they had not disclaimed responsibility for or knowledge of, rejected)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(E's contention that it should be obligated to offer reinstatement only to those economic strikers who responded to its letter regarding reinstatement, rejected, where U's offer to return to work was bona fide and unconditional, E had no substantial business justification for failing to reinstate strikers, E's letter merely inquired into strikers' interest in future job openings and, consequently, strikers were under no obligation to respond to E's letter)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(existence of bona fide replacements for economic strikers did not justify E's failure to offer strikers positions available, since economic striker is entitled to reinstatement if and when a job for which he is qualified becomes available; fact that his old job is occupied is no excuse for refusing to make reinstatement offer)

3317-2300 Supervisors

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

3317-2900 Laid-off employees

Hedison Manufacturing Company **249 NLRB No. 096**
(laid off Ees held entitled to reinstatement and backpay w/o regard to any effect layoff might have had on them if parties had bargained in good faith about layoff; while Ees were laid off because of lack of work in their department, it was their refusal to accept unlawfully imposed restrictions on their transfers to other departments, and their acceptance of layoff instead, which ultimately caused their loss of employment plantwide, not merely their loss of employment in their department)

3317-3000 Discharged employees

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(Ee discharged after unlawfully administered polygraph test showed he had stolen company property ordered reinstated where E did not prove that Ee would have been discharged without results of test)

Illinois Bell Telephone Company **251 NLRB No. 128**
(where Ee was discharged based on information obtained during interview at which she was unlawfully denied presence of representative, reinstatement proper to rectify harm caused; also all references to disciplinary action taken must be expungent from E's files)

O.K. Machine

3317-8100 Employees hired for specified period or job

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(Bd remedy applying to future projects, proper)

3333 MANNER OF REINSTATEMENT

3333-2000 Reinstatement to former or substantially equivalent position

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(where discharged Ee accepted E's offer of reinstatement unlawfully conditioned on Ee's acceptance of different work schedule and was unlawfully laid off day following his reinstatement, Bd ordered E to reinstate Ee to position he held on day he was discharged or to substantially equivalent position)

3333-2037 Only within specified location or unit

Earl Kuhns d/b/a Frenchy's K

3333-2050 Position not substantially equivalent where

3333-2050-0900 Probationary employee

Wright Plastic Products, Inc. **247 NLRB No. 101**
(determination of whether discriminatees who were rehired on probationary basis have been retained beyond probationary period left to compliance stage of proceeding)

3333-2050-3200 Different job classification

Charge Card Association **247 NLRB No. 119**
(E's offer to have strikers return to work only as probationary Ees not valid offer)

3333-2050-3900 Seasonal employment only

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

3333-8000 Validity of reinstatement offer

3333-8033 Mechanics of offer

3333-8033-1200 Receipt of offer

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(offer of reinstatement communicated to discriminatee's roommate not valid offer)

3333-8033-4000 Offer through union as agent

Birmingham Ornamental Iron Company **251 NLRB No. 115**
(E's collective offer to reinstate ULP strikers through U as strikers' agent upon U's unconditional offer on behalf of strikers to return to work fulfills E's obligation to notify strikers date they should return to work)

3341 APPLICATION FOR REINSTATEMENT

3341-0100 Generally

Matlock Truck Body

Matlock Truck Body

3341-2500 Requirement that application be made

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

Matlock Truck Body

Andersen Sand

3341-5000 Adequacy

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(Bd does not require *artistic request for reinstatement* but rather, in each case, determines whether facts warrant conclusion that individual desired reinstatement)

3350 Affirmative Defenses

Matlock Truck Body

3350-0400 Failure to apply for reinstatement

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

3350-0700 Refusal to reinstatement offer

Don Pizzolato, Inc. **249 NLRB No. 136**
(where Ee did not return application form to former E, this was not considered rejection of valid offer of reinstatement as application clearly indicated interview was needed and was conditional offer)

Matlock Truck Body

Custom Wood Interiors, Inc. **248 NLRB No. 023**

3350-1100 Misconduct during strike

3350-1133 Reinstatement not barred

3350-1133-1500 Where non-strikers are aggressors

Matlock Truck Body

3350-1133-2500 Misconduct must be such as to render employee unsuitable for further employment

3350-1133-2550 Balancing of misconduct in light of ULP

Matlock Truck Body

Matlock Truck Body

3350-1133-6200 Minor misconduct

Matlock Truck Body

Matlock Truck Body

Matlock Truck Body

Matlock Truck Body

Matlock Truck Body

Matlock Truck Body

3350-2100 Falsification of employment application

Garden State Motors Co. **JD-160-80**
(reinstatement and backpay ordered notwithstanding Ee's concealment of larceny conviction where conviction record was 20 years old and followed

3350-2100—Cont.

by relatively unblemished record; order contained proviso that order would not require reinstatement or backpay if it appeared in compliance stage that Ee was not entitled thereto under Bd precedent)

3350-2500 Solicitation of employer's customers

Vulcan Fuel Corporation JD-842-79
(laid off Ee not rendered unfit for reinstatement because Ee won bid for work previously performed by E since Ee was former entrepreneur who correctly believed he was wrongfully laid off and there is no reason to presume Ee took advantage of any confidential information in formulating bid)

3350-5900 Employee would have been discharged or laid off for nondiscriminatory reasons

Keeshin Charter Service, Inc. 250 NLRB No. 117
(discriminatee who was driver not reinstated since E's insurance carrier subsequent to discharge excluded from liability coverage any vehicle driven by discriminatee)

Digital Paging Systems of Toledo, Inc. 248 NLRB No. 015
(dischargee entitled to reinstatement and backpay since discharge motivated by U activity notwithstanding E seriously contemplated discharging Ee for poor sales prior to discovery of U activity or might have later discharged her for low sales)

Earl Kuhns d/b/a Frenchy's K

A.S.U., a subsidiary of Intermedco JD-(SF)-161-80
(where discriminatee would have been discharged at later time for lawful reasons, backpay tolled as of that time and reinstatement not ordered)

3350-7300 Employee voluntarily quit

A.S.U., a subsidiary of Intermedco JD-(SF)-161-80
(backpay and reinstatement awarded to discriminatee who had announced prior to her unlawful discharge her intention to leave in order to seek more renumerative employment, since such motivation presupposes obtaining other employment before leaving E)

3350-7400 Employee does not wish to return to work for employer

Don Pizzolato, Inc. 249 NLRB No. 136
(fact that Ee did not wish to return to job does not relieve E of obligation to make valid offer of reinstatement)

3350-7600 Employee was searching for other employment prior to discharge

A.S.U., a subsidiary of Intermedco JD-(SF)-161-80
(backpay and reinstatement awarded to discriminatee who had announced prior to her unlawful discharge her intention to leave in order to seek more renumerative employment, since such motivation presupposes obtaining other employment before leaving E)

3350-8100 Employee has regular and substantialy equivalent employment elsewhere

Matlock Truck Body

3383 SPECIAL TYPES OF REINSATEMENT ORDERS

3383-0900 Conditional orders

Charles H. McCauley Associates, Inc. 248 NLRB No. 047
(E's request that language in ALJ's recommended order be modified by conditioning the order of reinstatement with phrase *to the extent it has not done so*, denied, since issue of whether E in fact made unconditional offer of reinstatement had not yet been resolved)

3383-0936 Conditioned on resumption of operations

Routh Packing Company, Inc. 247 NLRB No. 053
(E to hire economic strikers on preferential basis if E or successor resumes operations)

ABC Trans-National Transport, Inc. 247 NLRB No. 025

3383-0990 Reinstate economic strikers upon application or as vacancies arise thereafter

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028
(E's failure to offer position to former economic striker, unlawful, where E filled position with nonstriker after unconditional offer to return to work made on behalf of strikers)

3383-6300 Preferential hiring

Central Transport, Inc. 247 NLRB No. 198
(remedy modified to include E establishing preferential hiring list and placing discriminatee's name at top of list)

Routh Packing Company, Inc. 247 NLRB No. 053
(E to hire economic strikers on preferential basis if E or successor resumes operations)

3383-8500 Make employees whole for loss suffered due to delay in reinstatement

Cable Vision, Inc. 249 NLRB No. 062
(ULP strikers were not reinstated w/i 5 days from date of unconditional application for reinstatement)

3900 PERSONS ENTITLED TO BACKPAY

Sachs Electric Company 248 NLRB No. 092
(determination of how many and which of a number of discriminatees were laid off by E or quit because of U's unlawful, request that they do so and suffered loss of earnings as result held appropriate matter for compliance stage of proceeding)

Alfred M. Lewis, Inc. 250 NLRB No. 183
(Bd held that Ee's discharge was *solely* result of E's unlawful production quotas and disciplinary system and that dischargee was therefore entitled to reinstatement and backpay in accordance with court decision)

N.L.R.B. v. Potter Electric Signal Company 600 F.2d 120 (C.A. 8, 1980)
(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See *Fibreboard*, 379 US 203)

3901 GENERALLY

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers 614 F.2d 134 (C.A. 7) (1980)
(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

3912 PROBATIONARY EMPLOYEE

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 054
(at time of strike)

3925 UNSPECIFIED BUT SIMILARLY SITUATED DISCRIMINATEES

Ironworkers, Local 483 (Building Contractors Association of New Jersey) 248 NLRB No. 006
(non-member discriminatee of local's unlawful hiring hall preferential policy limited to backpay period to when he filed his separate charge because GC expressly limited relief requested for him and it would be inequitable to place discriminatee in class of unnamed beneficiaries of ULP order whose cut-off date for backpay would be six months before initial charges were filed)

3937 LIMITED TO EMPLOYEES WHOSE STATUS WAS LITIGATED AT HEARING

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. 251 NLRB No. 032
(backpay limited to Ees found discriminated against at hearing where no general pattern of discrimination by U in operation of referral system existed)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) 250 NLRB No. 105
(U to make whole all Ees as to whom there was evidence of loss of benefits due to U's unlawful policy, but not to include Ees who were not named in complaint and whose status was not litigated at hearing, since that would be contrary to Bd precedent and would enable GC to engage in unwarranted fishing expedition at compliance stage of proceeding)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) 248 NLRB No. 006
(non-member discriminatee of local's unlawful hiring hall preferential policy limited to backpay period to when he filed his separate charge because GC expressly limited relief requested for him and it would be inequitable to place discriminatee in class of unnamed beneficiaries of ULP order whose cut-off date for backpay would be six months before initial charges were filed)

3985 PERSONS DISCRIMINATORILY DENIED EMPLOYMENT

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper 247 NLRB No. 199
(discriminatee entitled to backpay from date he would have started work at E had E not unlawfully withdrawn offer of position notwithstanding E may be overstaffed since at time of acceptance of job offer there was vacancy)

3989 STRIKERS

B. N. Beard Company **248 NLRB No. 016**

(ULP strikers unlawfully discharged as of time they went out on strike held entitled to backpay from date of discharge to date they are offered reinstatement, rather than from date they request reinstatement to date E offers them reinstatement)

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**

(unlawfully discharged strikers should receive back pay from dates their discharge letters were issued to date upon which they were reinstated)

3989-5000 Resigned as precondition to accepting new employment

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(resignation by ULP striker in order to accept other jobs during strike does not automatically eliminate striker as striking Ee absent unequivocal evidence of intent to permanently sever employment relationship; i.e., if new E required resignations to be submitted, such submission did not constitute unequivocal abandonment of employment)

3999 OTHERS

Hedison Manufacturing Company **249 NLRB No. 096**

(laid off Ees held entitled to reinstatement and backpay w/o regard to any effect layoff might have had on them if parties had bargained in good faith about layoff; while Ees were laid off because of lack of work in their department, it was their refusal to accept unlawfully imposed restrictions on their transfers to other departments, and their acceptance of layoff instead, which ultimately caused their loss of employment plantwide, not merely their loss of employment in their department)

4400 BACKPAY ORDERS

4401 GENERALLY

Babcock

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**

(ct enforced Bd's backpay order to all Ees at unlawfully closed plant involving two units each represented by different U, notwithstanding that E negotiated agreement as to effects of closing with one U; remedial order was not improper because closing harmed all Ees and agreement with one U regarding severance pay would not remedy 8(a)(3) violation, and remedial orders directed to non-parties are appropriate if fairly encompassed in C and adequately proved at hearing)

4417 JOINT BACKPAY LIABILITY

4417-2500 Predecessor and successor employers

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**

(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

4417-4200 Firms found to be single employer

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

(parent corporation and subsidiaries held liable notwithstanding violation committed by 1 subsidiary where *single enterprise* test met)

4417-8400 Employer and union

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**

(E's backpay liability would not be altered if Bd were to find that U's general refusal to refer Ees was independent violation of Act, since U would be held solely liable for illegal refusal to refer; however, E would be secondarily liable for its ultimate acquiescence in U's demand to discharge direct hires; such liability is unaffected by separate issue of alleged unlawful refusal to refer individuals for employment)

Schorr Stern Food Corp. **248 NLRB No. 050**

(under circumstances herein, E held liable for entire backpay award rather than having damages apportioned between E and U)

4417-8425 Jointly and severally liable

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

4417-8475 Union primarily, employer secondarily, liable

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

4433 COMPUTATION OF AMOUNT OF BACKPAY

4433-0100 Generally

Ace Beverage Co. **250 NLRB No. 066**

(in finding GC's backpay formula defective since not comporting with Bd's order entitling Charging Party (CP) to backpay he would have earned as supervisor from date he was unlawfully demoted to salesman until reinstated or offered reinstatement to former position, Bd rejected contention that CP's participation in strike as salesman was intervening event which made strike settlement agreement, waiving salesmen's right to recall, applicable to him; since E's wrongdoing placed CP in circumstances herein, he must bear burden of making CP whole w/o reliance on agreement)

Ace Beverage Co. **250 NLRB No. 066**

(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

Ace Beverage Co. **250 NLRB No. 066**

(GC's backpay formula rejected, since it did not comport with Bd's order entitling Charging Party (CP) to backpay he would have earned as supervisor from date he was unlawfully demoted to salesman until reinstated or offered reinstatement to former position; strike settlement agreement on which GC premised formula, claiming that agreement waived CP's right to recall to his salesman's position which he held at time of strike, is unrelated to violation found, and irrelevant to his backpay rights; consequently, agreement neither mitigated nor extinguished E's backpay liability)

Ace Beverage Co. **250 NLRB No. 066**

(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

4433-0700 Partial backpay

Ace Beverage Co. **250 NLRB No. 066**

(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd ordered his participation in strike, regardless of status, constituting withholding of services from E, be taken into account in backpay computation)

4433-1400 Method of determining what employee would have earned

4433-1410 Employee's earnings prior to discrimination

Highview, Inc. **250 NLRB No. 090**

(appropriate measure of hours worked is average of each calendar quarter of entire last period of employment before discriminatory discharge where Ee had long absence due to illness in last calendar quarter preceeding discharge)

Abrahamson Chrysler-Plymouth, Inc. **JD-65-80**

(because of seasonality factors in automobile sales, representative period for determining amount of backpay due salesman was average weekly earnings over prior two full calendar years before discharge rather than just average weekly earnings for 9 week period that Ee worked in calendar year of his discharge)

4433-1420 Earnings of comparable employee during backpay period

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**

(determination of Ee's gross earnings during backpay period made by using average wages of E's Ee U members from date of unlawful refusal to hire as it takes into account probability of earnings of one who would have been hired on date of Ee's unlawful refusal to hire)

4433-1440 Employee's rate of absenteeism prior to discrimination to be considered

4433-1440-5000 Except when due to specific illness

Highview, Inc. **250 NLRB No. 090**

(appropriate measure of hours worked is average of each calendar quarter of entire last period of employment before discriminatory discharge where Ee had long absence due to illness in last calendar quarter preceeding discharge)

4433-1480 Pay raise which employee would have received absent discrimination

Service Garage, Inc. **247 NLRB No. 115**

4433-2800 Gross backpay

4433-2833 Items included

4433-2833-4500 Retirement fund payments

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing

4433-2833-6300 Medical expenses

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing

Matlock Truck Body

4433-2833-8600 Additional insurance permiums paid by discriminatee

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing

4433-4200 Deductions from gross backpay

4433-4209 Recoupment of backpay

Plasticrafts, Inc. **248 NLRB No. 161**
(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

4433-4217 Interim earnings

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required that his earnings as salesman for period between demotion and striking be entertained as offset against gross backpay owing him as supervisor during such period)

4433-4217-2500 Items included

4433-4217-2545 Wages paid in equivalency for fringe benefits

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing

4433-4217-2590 Workmen's compensation award included to extent it is payment for lost wages

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(workmen's compensation award should be considered as interim earnings offset from backpay only so long as award is forthcoming so as to be used in backpay determinations and will not delay compliance beyond period of 30 days after ALJ's order; if not w/i 30 day period, issue of such contended interim earnings should be foreclosed)

4433-4217-5000 Items excluded

4433-4217-5012 Strike benefits

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

Robert E. Anderson and Richard E. Anderson, Co-Partners d/b/a Anderson Cabinets **JD-316-80**

4433-4217-5075 Earnings during hours when discriminatee would not have worked for employer

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(moonlighting earnings)

4433-4217-7500 Deductions

Matlock Truck Body

4433-4217-7510 Travel expenses incurred in seeking interim employment

Plumbers, Local Union No. 83 (Power City Plumbing

4433-4217-7520 Travel expenses incurred in going to and from interim job

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

4433-4217-7540 Room and board for interim employment out of town

Matlock Truck Body

4433-4233 Willful loss of earnings

4433-4233-0400 Failure to seek or accept interim employment

Highview, Inc. **250 NLRB No. 090**
(test of whether discriminatee has made reasonable search for employment is whether he/she had dilligently sought other employment during entire backpay period, and fact that discriminatee had no interim earnings during backpay period is not probative upon issue of whether discriminatee made diligent search for work)

Matlock Truck Body

Matlock Truck Body

DeLorean Cadillac, Inc. v. N.L.R.B. **614 F.2d 554 (C.A. 6) (1980)**
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

4433-4233-0900 Self-employment

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(self-employment is not tantamount to withdrawal from job market)

Matlock Truck Body

4433-4233-1300 Failure to retain interim employment

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(Ee did not engage in willful loss of earnings during backpay period where he left interim employment because he was not receiving benefit of having health, welfare, and pension contributions made to U funds and wanted to work where such would be done)

Matlock Truck Body

4433-4233-1600 Acceptance of lower paying job

Matlock Truck Body

4433-4233-7600 Accepting less than regular interim employment salary

Matlock Truck Body

4433-4250 Severance payments

W. R. Grace

4433-4267 Premiums for insurance or medical coverage which discriminatee would have paid absent discrimination

Matlock Truck Body

4433-4283 No deduction for periods when employee would not have worked for employer

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

4433-5600 Interest

W. R. Grace

4433-5633 Computed at Internal Revenue service's 'adjusted prime rate'

Olympic Medical Corporation **250 NLRB No. 011**
(use of automatically adjusting *adjusted prime rate* for determining interest rate as established in *Florida Steel Corp.*, 231 NLRB 651, reaffirmed over fixed rate formula; automatically adjusting rate is preferable because of its link with interest rates of private industry and therefor provides a fairer method for setting interest rate on backpay and other monetary remedies)

4450 BACKPAY PERIOD

4450-2500 Beginning of period

4450-2507 Date of discriminatory action

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(where E unlawfully failed to bargain with U over partial terminations of operations and later closed all operations, backpay period extends from times Ees terminated notwithstanding on strike at that time to date of termination of all operations)

Newspaper Printing Corporation **250 NLRB No. 132**
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

Trojan Transportation, Inc. **249 NLRB No. 084**
(period for computation of backpay and seniority commenced from date of unlawful discharges, notwithstanding E's contention that period should have commenced from date discriminatees' replacements were added to work force, since discriminatees were not recalled but were unlawfully discharged; however, E permitted to attempt to mitigate its backpay liability by showing in compliance proceedings that discriminatees would have been laid off for economic reasons at some time after date of discharges, had Ees not been unlawfully discharged)

Andersen Sand

4450-2507-2500 Unlawful discharge of striker

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

Carbonex Coal Company **248 NLRB No. 107**

C

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(unlawfully discharged strikers should receive back pay from dates their discharge letters were issued to date upon which they were reinstated)

4450-2507-5000 Mitigatory circumstances

Wonder Markets, Inc. **249 NLRB No. 042**
(in light of Bd finding that E's offer to Ee of another job was not substantially equivalent to his former position, discriminatee cannot be put under obligation to accept such job to toll or mitigate lost wages and thereby reduce E's backpay obligation)

4450-2514 Date work became available for discriminatee

4450-2514-5000 Seasonal work

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

4450-2542 Five days after ULP strikers' unconditional application for reinstatement

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

4450-2577 Date discriminatee requests reinstatement after abandoning strike

Routh Packing Company, Inc. **247 NLRB No. 053**
(backpay awarded all strikers not permanently replaced as soon after their unconditional offer to return to work as their individual positions were open)

4450-5000 End of period

4450-5001 Generally

The Leavenworth Times, A Division of Thomson Newspapers, Inc. **JD-(SF)-308-79**
(where Ees lost money each week for three years following unlawful failure to provide merit increase, E's obligation to backpay not cut off by subsequent bargaining agreement between E and U, notwithstanding that the agreement provided salary for Ees; backpay case was excluded from the collective-bargaining)

4450-5006 Valid offer of reinstatement

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(offer of reinstatement communicated to discriminatee's roommate not valid offer)

General Meats, Inc. **247 NLRB No. 153**
(where Bd and ct ordered reinstatement of 3 discriminatees and Ees were rehired as helpers rather than drivers and subsequently quit, Ees found constructively discharged and additional backpay ordered from cutoff date of original backpay specification)

4450-5006-2500 Offer of reinstatement to some discriminatees tolls backpay as to those offered reinstatement

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer to return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

4450-5006-5000 Offer of reinstatement to some ULP strikers tolls backpay as to those offered reinstatement

Lucy's, Inc. **JD-832-79**

4450-5042 Date discriminatee obtains substantially equivalent employment elsewhere

W. R. Grace

4450-5045 Date discriminatee abandoned employment

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(resignation by ULP striker in order to accept other jobs during strike does not automatically eliminate striker as striking Ee absent unequivocal evidence of intent to permanently sever employment relationship; i.e., if new E required resignations to be submitted, such submission did not constitute unequivocal abandonment of employment)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(constructive discharge does not constitute willful loss of earnings)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(self-employment is not tantamount to withdrawal from job market)

4450-5054 Date of conviction for crime

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(conviction and imprisonment of unlawfully discharged Ee would require disqualification of Ee from reinstatement and backpay beyond date of conviction)

4450-5060 Date discriminatee would have been terminated or laid off for non- discriminatory reasons

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(where discriminatee would have been discharged at later time for lawful reasons, backpay tolled as of that time and reinstatement not ordered)

4450-5084 Date employer ceased operations

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(where E unlawfully failed to bargain with U over partial terminations of operations and later closed all operations, backpay period extends from times Ees terminated notwithstanding on strike at that time to date of termination of all operations)

4450-5090 End of period in 8(a)(5) case

Newspaper Printing Corporation **250 NLRB No. 132**
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

4450-5090-1700 Agreement reached on mandatory subjects of bargaining

Ferro Mechanical Corp. **249 NLRB No. 083**
(where there has been unlatual termination of operations w/o bargaining)

4450-5090-3300 Impasse reached on mandatory subjects of bargaining

Ferro Mechanical Corp. **249 NLRB No. 083**
(where there has been unilateral termination of operations w/o bargaining)

4450-5090-5000 Failure of union to request bargaining within 5 days after receiving notice of employer's desire to bargain

Ferro Mechanical Corp. **249 NLRB No. 083**
(where there has been unilateral termination of operations w/o bargaining)

4450-5090-6700 Failure of union to bargain in good faith

W. R. Grace

W. R. Grace

4450-7500 Tolling of backpay

4450-7501 Generally

4450-7501-3300 8(a)(3) cases

Wonder Markets, Inc. **249 NLRB No. 042**
(in light of Bd finding that E's offer to Ee of another job was not substantially equivalent to his former position, discriminatee cannot be put under obligation to accept such job to toll or mitigate lost wages and thereby reduce E's backpay obligation)

4450-7560 Unavailability of discriminatee for work

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer to return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

4450-7560-7000>I14Discriminatee-student returns to school

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(full time college student not entitled to backpay for period of school term)

4450-7575 Rejection of valid offer cf reinstatement

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer tc return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080
(liability for back pay not tolled by *invalid* offer of reinstatement)

4450-7575—Cont.

Newspaper Printing Corporation **JD-203-80**
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

4467 AFFIRMATIVE DEFENSES

4467-0100 Generally

DeLorean Cadillac, Inc. v. N.L.R.B. **614 F.2d 554 (C.A. 6) (1980)**
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

4467-2300 Conduct constituting cause for discharge

Matlock Truck Body

4467-2500 Participation in strike misconduct

C-F Air Freight, Inc. **247 NLRB No. 060**
(defense to order requiring reinstatement and backpay based on assertion that order was *unfair* and unjustified and that participation of Ees in strike herein, which was basis for other ULP cases brought against U and were subject of settlement agreements, was tantamount to Ees' ratification of U's alleged misconduct which they had not disclaimed responsibility for or knowledge of, rejected)

4467-7700 Employee would have been discharged or laid off for nondiscriminatory reasons

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

4467-9100 Rejection of reinstatement offer

Newspaper Printing Corporation **JD-203-80**
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

5500 REIMBURSEMENT ORDERS

5514 DUES, INITIATION FEES, AND ASSESSMENTS

O.K. Machine

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member of multi-E association ordered to pay U any loss of dues suffered as result E-member's unlawful refusal to sign and abide by multi-E contract containing valid U dues-checkoff provision)

5548 MEDICAL EXPENSES

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(for any medical or dental bills Ees have paid directly to health care providers that contract would have covered, as well as any premiums Ees have paid to insurance companies to continue medical and dental coverage in absence of E's required contributions)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(E to reinburse Ees for medical and dental bills which contractual policies would have covered as well as premiums Ees may have paid to third-party insurance companies to continue coverage)

Campo Slacks, Inc. and J

Matlock Truck Body

Keystone Steel

The Saloon, Inc. **247 NLRB No. 156**
(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

5550 CONTRIBUTIONS TO WELFARE, PENSION AND OTHER FUNDS

Pullman Building Company **251 NLRB No. 145**
(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**

Dial Tuxedos, Inc. **250 NLRB No. 064**
(question of whether E must pay any additional amounts into benefit funds in order to satisfy Bd's *make whole* remedy left to compliance stage of instant case, since provisions of Ee benefit fund agreements were variable and complex)

Campo Slacks, Inc. and J

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Argano Electric Corp. **248 NLRB No. 049**
(payable to funds of U with which E had current contract but with whom E chose not to continue recognition and honor contract)

Schorr Stern Food Corp. **248 NLRB No. 050**
(remedial order which provides literally only for reimbursement to discriminatees for lost welfare or pension benefits, does not preclude order in subsequent backpay proceeding, directing E to make payments into trust fund)

B. N. Beard Company **248 NLRB No. 016**
(E ordered to pay to U pension fund contributions unlawfully withheld; however, Bd does not provide at adjudicatory stage of proceeding for addition of interest on withheld payments; Bd left to compliance stage question whether E must pay additional amounts by reference to governing provisions of fund's documents and, absent such provisions, to any evidence of any loss directly attributable to withholding action, but not collateral losses)

The Saloon, Inc. **247 NLRB No. 156**
(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

5563 ALLOWANCES FOR EQUIPMENT ETC.

Standard Homes, Inc. **249 NLRB No. 146**
(reimbursement ordered of safety shoe allowance unlawfully withheld under contract)

5570 LITIGATION COSTS AND EXPENSES (SEE ALSO 625-1967-5600)

Standard Homes, Inc. **249 NLRB No. 146**
(reimbursement of U and Bd for litigation costs not awarded where respondent's defense of its conduct were not patently frivolous)

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(E's request for reimbursement to itself and to Bd of investigative, processing, and litigation expenses incurred by each of them in instant 8(b)(7)(A) proceedings and in 8(a)(2) proceedings brought by U against E, on ground U prolonged various proceedings as subterfuge which permitted it to continue its unlawful conduct for extended period of time, denied, where litigation was not frivolous but dealt with serious and legitimate issues which are debatable)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

5570—Cont.

(E ordered to make Ees whole for all legal expenses incurred by them in defense of E's state civil lawsuit brought against them for libel and wrongful interference, which proceeding arose out of filing of ULP charges by Ees with Bd and their concerted protected activities)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

H. H Fredericksen Co. **JD-(SF)-64-80**
(request by E, who was subject of dismissed complaint, for litigation expenses, denied, where, assuming Bd may require its statutorily independent GC to reimburse respondents when complaints filed against them have been dismissed, GC's determination to proceed had not been frivolously reached, and his decision was not unreasonable, or lacked a rationally justifiable foundation)

5570-0100 Generally

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reinbursement order)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(disavowing ALJ's characterization of order requiring E to pay Bd and U litigation costs as *traditional in Stevens cases*, Bd noted that it reviews all cases on their merits and grants or denies remedies based on record as a whole)

5570-5000 Types of litigation expenses

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(reimbursement denied of all investigative, processing, and litigation expenses incurred by Bd and by E, charging party herein, in processing instant 8(b)(7)(A) proceedings and in processing 8(a)(2) charges filed by U against E)

Sachs Electric Company **248 NLRB No. 092**
(Bd declined to reimburse U member whom U discriminatorily refused to register on hiring hall referral list for *out-of pocket expenses* in taking to arbitration his claim that he was entitled to such listing; such order unwarranted in view of availability of Bd's processes for determination regarding U's ULPs and adequacy of Bd's backpay and registration remedy)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse Bd and U for all litigation expenses, relating to meritorious ULP allegations and reasonably incurred as result of lengthy proceeding herein where, as in past, E reacted to organizing attempt by engaging in surveillance, creating impression thereof, promising and granting benefits, and unlawfully interfering with organizing campaign)

5580 BARGAINING EXPENSES OF UNION

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E must reimburse U for its bargaining expenses where E engaged in prolonged course of ULPs designed to thwart U's efforts to negotiate contract)

5584 JOINT LIABILITY OF UNION AND EMPLOYER

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

5596 ORGANIZING AND NEGOTIATING EXPENSES OF UNION

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reinbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse U for any excess organizing costs it reasonably incurred from date E willfully flouted its lawful duty to recognize U)

5598 MAKE WHOLE REMEDY

General Motors Corporation **251 NLRB No. 121**
(Bd ordered make-whole remedy, including reinstatement and backpay, where E did not sustain its burden of establishing that it would have discharged Ee even in absence of unlawful *Weingarten* interview)

Kraft Foods, Inc. **251 NLRB No. 006**
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Newspaper Printing Corporation **250 NLRB No. 132**
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*collateral losses* not included in any additional amounts determined in order to satisfy Bd's *make-whole* remedy)

Campo Slacks, Inc. and J Plasticrafts, Inc. **248 NLRB No. 161**
(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

5598-5000 Interest

Pullman Building Company **251 NLRB No. 145**
(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

5599 OTHER FEES

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(interest payments on additional amounts E must pay into benefit funds to satisfy Bd's *make-whole* remedy)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*collateral losses* not included in any additional amounts determined in order to satisfy Bd's *make-whole* remedy)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punative relief; injury was ambiguous)

6600 BARGAINING ORDERS

6601 GENERALLY

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(exhibits containing instructions given to supervisors concerning their obligations under labor laws and which were admitted into evidence held not to make bargaining order herein inappropriate since instructions were not transmitted to Ees and did not seek to retract or dissipate past ULPs; moreover, instructions were given over 1 year after refusal to bargain, and propriety of bargaining order must be apprised at time of ULPs and not at time Bd is deciding case)

Arizona Public Service Company **247 NLRB No. 054**
(while E *bought time* by its unlawful refusal to bargain over subcontracting of unit work, it was not evident how such advantage could be negated by Bd's remedial order and, on other hand, U is not w/o practical recourse

6601—Cont.

under circumstances, including filing of appropriate charges and seeking additional relief from Bd)

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(ct has held that because of unusual nature of *Gissel* bargaining order Bd should look to events subsequent to ULP in order to determine appropriateness of (bargaining) order)

N.L.R.B. v. Ohio Masonic Home **620 F.2d 138 (C.A. 6, 1980)**
order enforced and election upheld where E did not sustain burden of establishing that Bd acted arbitrarily, capriciously, and abused its discretion in overruling objections and ordering certification)

6601-5000 Status quo ante

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(rationale for granting retroactive bargaining order is to re-establish conditions as they existed before E's unlawful campaign and not place U in a disadvantaged position)

Arizona Public Service Company **247 NLRB No. 054**
(E ordered, immediately upon U's request to bargain in good faith over any proposed lawful restrictions on subcontracting of unit work; since there was no allegation or evidence that E unilaterally altered its subcontracting practices, and absent any request therefor by GC, order requiring reinstatement of status quo ante or order requiring unit Ees to be *made whole* is unwarranted)

6607 APPROPRIATE ONLY FOR MAJORITY REPRESENTATIVE

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(burden of proving U ever represented majority of Ees in appropriate unit not met)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(notwithstanding E clearly *flaunted the Act* in instant case, Bd did not issue requested *bargaining order* based on its decision in *United Dairy Farmers Cooperative Association,* 242 NLRB No. 179 (1979), inasmuch as there was no showing that U, in instant case, previously enjoyed majority support in the unit; Bd balanced interest of preventing outrageous ULPs with principal of majority rule)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(bargaining order, based upon U's valid card majority, warranted where E's misconduct was pervasive and flagrant in nature by discharging Ee after reducing his working hours, interrogations and unlawful no-solicitation rule)

J. P. Stevens

6612 TO REMEDY ULP'S WHICH PRECLUDE FAIR ELECTION

United Services For The Handicapped **251 NLRB No. 117**
(U card majority rather than election provides more reliable test of Ees' R desires where E's ULPs precluded holding of fair election)

Apple Tree Chevrolet, Inc. **251 NLRB No. 076**
(Gissel order affirmed on remand, notwithstanding ct reversal of Bd finding of unlawful discharge, since E's other misconduct as affirmed by ct dissipated U's strength and possibility of erasing effects of such ULPs by use of traditional remedies was slight)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(bargaining order warranted where ULPs committed by E constituted show of brute force, resulting in termination of only those Ees who had shown support for U, and impact of such discharges in small unit had for greater effect than in larger unit and made fair election impossible; consequently, E's ULPs may not be remedied merely by use of Bd's traditional remedies)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(appropriate, in view of Es unlawful interrogation and granting of benefits which particularly has tendency to undermine majority and impede election process by providing as much if not all they hoped to gain through U representation)

Brooks Cameras, Inc. **250 NLRB No. 116**
(appropriate, where E followed refusal to bargain with U having card majority with illegal discharge of approximately one-half of unit Ees, including U organizer)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(bargaining order warranted, in view of discharge of leading U adherent, discharge of other Ees for pretextual reasons, coercive interrogation and threats involving in one instance E's highest plant official, and continuation of E's egregious conduct at time of hearing w/o any abatement or remedy therefor)

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**
(appropriate in view of E's unlawful interrogation and discharges, where U had majority and had demanded recognition)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(appropriate, in view of E's campaign of intimidation and coercion after it learned of U organizing campaign which included threat to close business and to discharge Ees, and in view of its subsequent unlawful discharge of 10 U activists out of 27 Ee unit)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's conduct warranted bargaining order; inasmuch as E not only attempted to thwart representation desire of Ees but in the process intentionally sought to abort free election, odds for free choice in rerun election were minimal)

Hedison Manufacturing Company **249 NLRB No. 096**
(notwithstanding unresolved question regarding alleged unlawful discharges, herein remanded to ALJ, Bd issued order requiring E to c/d from engaging in unlawful activity and to bargain with U, since resolution of remanded issue did not affect Bd's conclusion that E's extensive ULPs had tendency to undermine U's majority and to impede election process, where ULPs ranged from discriminatory layoffs, unlawful imposition of conditions for transfer of Ees, threats of reprisal, and acts of surveillance and coercive interrogation directed at substantial number of Ees)

Battery Bill, Inc. **249 NLRB No. 030**
(appropriate, in view of unlawful discharges, interrogations, and threats)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(appropriate, where all members of unit had signed authorization cards and there was unlawful interrogation and discharge)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(inappropriate where ULPs not so egregious as to preclude holding of fair and reliable election)

Ditch Witch of Central Illinois, Inc. **248 NLRB No. 052**
(*Gissel* order appropriate where E's course of serious ULPs included coercive interrogations and discriminatory discharges which destroyed U majority status immediately after U demand for recognition)

Permanent Label Corporation **248 NLRB No. 021**
(violations of Section 8(a)(1), (3) and (4))

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(appropriate, in view of E's unlawful interrogation, threatening of plant closure and permanent replacement of ULP strikers if they did not abandon strike, refusal to reinstate strikers or to pay strikers accrued vacation pay, offering to strikers additional pay to abandon strike, and creating impression of surveillance)

Pay 'N Save Corporation **247 NLRB No. 184**
(bargaining order issued since discriminatory discharge of leading U adherents had especially pervasive effect on other Ees, and impact of discharges in small unit had far greater effect than in larger one and practically makes fair election impossible)

Tartan Marine Company **247 NLRB No. 073**
(mtn to reopen record to determine if bargaining order warranted on basis of Ee turnover, and lapse of time since ULPs, denied, notwithstanding dismissal of complaint in prior case in which E was Respondent)

Tartan Marine Company **247 NLRB No. 073**
(appropriate, where U had card majority, in view of E's unlawful interrogations, threats, solicitation of Ees to withdraw U cards, encouraging Ee not to honor Bd subpoena, denial of wage increases, and refusal to rehire U adherent)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(after count of discriminatees' ballots, if revised tally of ballots does not show that majority of votes have been cast for U, issuance of bargaining order is warranted, since E's unlawful conduct precluded likelihood of fair second election)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(GC's request for prospective company-wide bargaining order covering future bargaining requests whenever U secures either a card majority or certification, denied, since this was not a certification refusal to bargain case and no need exists for such order, and requested remedy is not appropriate for Gissel refusal to bargain since bargaining order based on card majority requires Bd's assessment of facts and its remedial authority in each case; moreover, GC has readily available litigation to accomplish same result)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(bargaining order appropriate where E's ULPs were severe and widespread, were of character which would linger, and were incapable of being dissipat-

6612—Cont.

ed under traditional remedies which also would not prevent their recurrence; moreover, denial of bargaining order would create in minds of Ees notion that E could successfully flout law and escape bargaining obligation simply by virtue of passage of time)

Jamaica Towing, Inc. **247 NLRB No. 042**
(upon ct remand, Bd affirmed its issuance of bargaining order, where E deliberately engaged in preelection unlawful conduct designed to convince Ees that their demands would be met through direct dealing and that U representation would in no way be advantageous to them, and E thereby so thoroughly chilled Ees' desire for representation as to cause them to reject election process; in view of small number of unit Ees and impact of E's conduct upon them, inference is that such conduct would continue to influence Ees' free choice in rerun election)

Jamaica Towing, Inc. **247 NLRB No. 042**
(bargaining order proper where, even though E's violations were not in category of exceptional cases and violations could not be characterized as *ouragеous*, they were at least sufficiently serious and extensive, and their effect so lingering, that they fall w/i second category of *less extraordinary cases* marked by less pervasive practices which still have tendency to undermine majority strength and impede election processes)

Carlina Knitting Co., Inc., et al. **JD-321-80**
(not appropriate where ULPs are not so *outrageous* or *pervasive* as to impede election process or make likelihood of fair election impossible)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(appropriate, in view of lingering effects of E's unlawful threats, encouragement of formation and domination of Ee committee, retaliatory layoff of Ees, and refusal to bargain with outside U which had majority)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(ct enforced Bd's bargaining order where E's ULPs tended to undermine U's majority strength and make fair election impossible because of nature of ULPs which involved implied threat to close plant communicated to significant percentage of Ees, participation of senior company officials in ULPs, and fact that factors undermining first election would be present at any future election)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(not warranted, notwithstanding unlawful interrogation, discharges which were corrected w/i 48 hours, creation of impression of surveillance)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(inappropriate where there were no discharges, widespread discrimination or harassment, where plant closing was for economic reasons, effect of ULP's would quickly dissipate, and finding of threat of sham bargaining was not supported by substantial evidence)

N.L.R.B. v. Richard Tischler, Martin Rader and Donald Connelly, Sr., a limited partnership, d/b/a Devon Gables Nursing Home, et al. **615 F.2d 509 (C.A. 9) (1980)**
(bargaining order rather than c/d order appropriate, in view of E's refusal of U's demand for recognition on basis of card majority and its commission of numerous ULPs; possibility of erasing effects of past ULPs and insuring fair election by traditional remedies was slight)

6612-0100 Generally

Century Moving

Apple Tree Chevrolet, Inc. **251 NLRB No. 076**
(Bd proceeds with tabulation of challenged votes for election results not out of any doubt concerning bargaining order remedy, but so as not to preclude U from enjoying any benefits to which it may otherwise be entitled as certified representative; moreover, Bd's established procedure to provide both remedies is because certification alone would not suffice to correct any unilateral changes E may institute between period when bargaining obligation commenced and issuance of certification, and further prolong E's refusal to bargain based on U's institution of still another ULP proceeding)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**

Spearin, Preston

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(appropriate remedy where E threatened to discharge all driver-warehousemen in unit, unit was very small, E unlawfully promised insurance benefits and granted wage increase; moreover, E had prior background of violating Act to discourage U activity)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(bargaining order, based upon U's valid card majority, warranted where E's misconduct was pervasive and flagrant in nature by discharging Ee after reducing his working hours, interrogations and unlawful no-solicitation rule)

Wright Plastic Products, Inc. **247 NLRB No. 101**
(bargaining order necessary where E reacted swiftly and severely to organizational activity by discharging half of work force, threatening to close plant, w/i 1 week of initial organizational activity as such activity indicates that E is deeply committed to its anti-U position and substantial likelihood exists that it would resume its ULPs if second election were directed)

Jamaica Towing, Inc. **247 NLRB No. 042**
(since bargaining orders have basic purposes of protecting Ee sentiments reached attime of card signing by majority of unit Ees and deterring E's future misbehavior, validity of bargaining order rests on evaluation of situation as of time unlawful conduct was committed)

Jamaica Towing, Inc. **247 NLRB No. 042**
(while instant case did not include factors in hallmark type of case in which bargaining orders issue, such as discharge for U activity or direct threats to close or curtail operations, other types of conduct substantially similar to that involved herein, while perhaps less dramatic in nature, can and do affect Ees to such an extent that bargaining order is usually warranted, and instant case graphically demonstrates such severity of impact inasmuch as E's misconduct caused Ees to repudiate U before election)

Jamaica Towing, Inc. **247 NLRB No. 042**
(prejudicial impact of E's unlawful preelection conduct held not dissipated by Ee turnover since commission of ULPs and by passage of time since issuance of bargaining order; to delete bargaining order on basis of Ee turnover would reward, rather than deter, E guilty of preelection ULPs, and delay due to passage of time hardly denied justice to wrongdoer, for during period of delay, E enjoyed fruits of its misconduct which was directed precisely at avoiding bargaining obligation it still seeks to avoid)

Chef's Pantry, Inc. **247 NLRB No. 018**
(since effect of ULPs may be easily dissipated by Bd's standard remedies, new election, ordered after remedies are invoked, would be likely to fairly reflect true desires of Ees)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violations found held not sufficiently severe to warrant finding of violation of Sec. 8(a)(5) with accompanying bargaing order)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's defense to bargaining order on ground that Bd gerrymandered two units so that it could issue bargaining order and that Bd's orders, directing reelection in one unit while ordering bargaining in another unit, were inconsistent, rejected; Bd did not abuse its considerable discretion in setting the bargaining units, and Bd did not make inconsistent findings because neither R nor ULP proceeding presented Bd with question whether free election could be held in second unit)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(enforcement of bargaining order denied where post-majority conduct did not fall w/i Gissel *less extraordinary* type of case inasmuch as occurrence of 2-month election campaign cannot be considered *pervasive* nor was case *extraordinary* since conduct had limited impact on labor force and no senior company officials committed or sanctioned any ULPs)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(enforcement of bargaining order denied where pre-majority conduct did not fall w/i Gissel *exceptional* case category inasmuch as three ULPs involved cannot be classed as *pervasive* in relation to two month organizational drive nor as *outrageous* since neither company officials nor large number of Ees nor immediate drastic consequences were involved; moreover, pre-majority conduct could not have undermined majority strength which is essential requirement of Gissel *less extraordinary* type of case)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(while it is for Bd and not cts to make determination as to effects on election process of ULPs of varying intensity because of Bd's knowledge and expertise, ct held that it would be remiss in its judicial function if, on record as sparse as herein, it were to enforce a bargaining order which, on every count, could not even be regarded as colorably in compliance with Gissel)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(E's failure to publicly rebuke perpetrators of ULPs held not to warrant issuance of bargaining order since E's failure to do so did not constitute substantial evidence that fair rerun election would not be possible inasmuch as any continuing impact which E's failure may have had could be corrected by c/d order and posting of notice)

J. P. Stevens

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(determination of whether bargaining order warranted is task, not for reviewing cts, but for Bd based on its expert estimate as to effects on election of the ULPs)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(proper where only 1 Ee violatively discharged because of small size (4 Ees) of bargaining unit)

6612-5000 May not be ordered where results of valid election not set aside

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(unlawful discharge of 1 Ee not sufficient basis for bargaining order where U campaign began weeks after discharge and cards were also obtained long after discharge)

6612-8700 Order operates from date of either employer's misconduct precluding fair election or union's demand for recognition

Coating Products, Inc. **251 NLRB No. 170**

Amber Delivery Service, Inc. **250 NLRB No. 016**
(where E embarked on series of ULPs, including some designed to change status of its Ees to independent contractors, immediately after it received U ptn; moreover, necessity for bargaining order not changed by fact that lawful discharges caused U to lose its majority status)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(order to operate from date E's misconduct began)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(bargaining order warranted where E threatened Ees with loss of jobs and gave all Ees raise while objections pending which precludes second election)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(order to operate from date of U's demand for recognition)

Pay 'N Save Corporation **247 NLRB No. 184**
(order dated from date upon which E commenced its ULPs)

6612-9300 Order operates from date union attains majority status

Permanent Label Corporation **248 NLRB No. 021**
(order operates from date E refused to bargain after U had majority)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**

Alumbaugh Coal Corporation **247 NLRB No. 112**
(from date U did attain majority status in past)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(where U demanded recognition before attaining majority status, Bd held such demand as continuing after U had established majority status)

6618 APPROPRIATE DESPITE INCREASE IN UNIT EMPLOYEES SINCE ULPS

Amber Delivery Service, Inc. **250 NLRB No. 016**
(where E embarked on series of ULPs, including some designed to change status of its Ees to independent contractors, immediately after it received U ptn; moreover, necessity for bargaining order not changed by fact that lawful discharges caused U to lose its majority status)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(remand to Bd to consider additional evidence pertaining to necessity of bargaining order where ct reversed Bd on one ULP finding, as this is independent ground for review and differs from situation where ct upholds Bd order in toto)

6623 IN ABSENCE OF DEMAND FOR RECOGNITION

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(proper remedy)

6625 BARGAINING CONCERNING PARTICULAR SUBJECT

6625-2400 Subcontracting of work

Arizona Public Service Company **247 NLRB No. 054**
(E ordered, immediately upon U's request to bargain in good faith over any proposed lawful restrictions on subcontracting of unit work; since there was no allegation or evidence that E unilaterally altered its subcontracting practices, and absent any request therefor by GC, order requiring reinstatement of status quo ante or order requiring unit Ees to be *made whole* is unwarranted)

6625-8000 Conditions of employment of trainees

United States Steel Corporation **248 NLRB No. 090**
(Es to bargain on request concerning any future summer training schools to be attended by unlicensed Ees represented by U)

6650 BARGAIN IN GOOD FAITH

6650-0100 Generally

Pullman Building Company **251 NLRB No. 145**
(E to comply with *Master Agreement* retroactively to date ULPs began rather than from 6 months before charge was filed, since 10(b) period was tolled for remedy as well as for charge where U through no fault of its own did not immediately become aware of E's ULP's)

6650-1200 Execute agreed contract

6650-1288 Union given option of signing contract or bargaining

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

6650-2500 Honor contract

Pullman Building Company **251 NLRB No. 145**
(E to comply with *Master Agreement* retroactively to date ULPs began rather than from 6 months before charge was filed, since 10(b) period was tolled for remedy as well as for charge where U through no fault of its own did not immediately become aware of E's ULP's)

6650-3700 Furnish information

6650-3714 All relevant and necessary information

Southwestern Bell Telephone Company **247 NLRB No. 027**
(*modus operandi* for providing information on job vacancies filled and applications filed, unless parties otherwise agree in writing, enunciated in remedy provided by ALJ)

625-6650-3753 Photocopies of relevant documents

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**
(refusal to provide U with photocopies of requested documents necessary to process five grievances violative where, although E would rather furnish the information by reading to note-takers or permitting U to hand-copy documents, photocopying procedure would have been much less costly to E and U, and would have given U greater assurance of accuracy and completeness of information furnished)

6675 EXTENSION OF CERTIFICATION YEAR

Libbie Convalescent Center a/k/a Libbie Rehabilitation Center, Inc. **251 NLRB No. 116**
(not appropriate where E withdrew recognition shortly after end of certification year but no finding of bad-faith bargaining)

Carbonex Coal Company **248 NLRB No. 107**
(extended to 1 year from time E commences to bargain in good faith)

6687 AFFIRMATIVE DEFENSES

6687-2500 Loss of union's majority

6687-2550 Employee turnover

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

6687-8100 Union misconduct

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(bargaining order proper notwithstanding U engaged in retaliatory conduct against Ee who testified against U at Bd hearing where conduct occurred 6 weeks after Ee testified, hearing almost completed and no evidence that conduct had any effect on testimony of any witness at hearing)

7700 NOTICE REQUIREMENTS

7707 NECESSITY FOR POSTING

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7714 TIME OF POSTING

7714-9000 Other

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to post notice for 1 year in view of severity of ULPs, 1-year time span w/i which they occurred, and delay between violations and implementation of remedy)

7728 PLACE OF POSTING

7728-1200 All locations

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7742 MANNER OF NOTICE

7742-1700 Mailed

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(mailed to Ees employed by E during time of ULPs)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(mail signed copies of notice to all laid-off Ees who were bargaining unit members)

Wellman Industries, Inc. **248 NLRB No. 029**

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(mail to current Ees and all Ees on payroll at time ULPs were committed)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to mail copy of Bd notice to home of each of its Ees at all of its plants, together with explanatory letter signed by highest official of recipient's plant)

Shulman Air Freight, Inc. **JD-(SF)-39-80**
(*rather than posted* in view of fact that E's involved facility had ceased operation prior to instant ULP charge, complaint and hearing)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7742-3300 Read by company official or Board agent

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(Bd ordered notice to Ees be read by either owner or manager of E with requirement for attendance of Bd agent when notice read; reassurances that anti-U campaign will end must come from *top* from which it emanated; therefore, Bd required notice be read by management and not Bd Agent)

Wellman Industries, Inc. **248 NLRB No. 029**

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(notice to be read to current Ees assembled for that purpose by district manager; Bd to be afforded reasonable opportunity to provide for attendance of Bd agent)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice ordered read during working time by highest managerial official at plant or by Bd agent)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7742-5000 Published in newspaper of general circulation

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(Bd ordered that E publish in local newspapers of general circulation copy of notice *two times per week for a period of 4 weeks,* since Bd deemed requirement to have been necessary part of remedy because it served to *emphatically---inform Ees of their Section 7 rights and assure Ees that Respondent will respect those rights*)

7742-6700 Notice published in employer's daily bulletin or other company publications

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(copy of notice to be included in appropriate company publications)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd's requirement for inclusion of notice in *appropriate company publications* not warranted, since notice is to be given to Ees otherwise by mailing, by posting, and by reading, and additional requirement for inclusion of publication notices cannot be sustained inasmuch as only purpose would be to give notice of E's violations to E's customers, suppliers, and other public members which, although it might deter persons from violating Act, is an exaction which neither makes Ees whole nor assures them that they can bargain with E through representatives of their own choosing)

7770 PERSONS REQUIRED TO SIGN NOTICES

7770-1100 Board of Directors

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

7770-1200 Company president

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

7770-40000 Manager

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(all notices to be signed personally by E's district manager)

7784 FORM AND CONTENTS OF NOTICE

7784-1000 Notice in foreign language

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(bilingual notice required to include Spanish version)

7784-2800 Language inappropriate

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd required to revise language of notice to avoid possibility of any misunderstanding which might arise due to interpretation that E had been ordered to recognize U at all plants, instead of just 2 plants involved herein)

7784-8500 Employer will not interfere with employees' right to resort to Board processes

Don Pizzolato, Inc. **249 NLRB No. 136**
(E will not discharge Ees for participating in conferences on representation ptn at Bd offices)

8800 ORDERS TO REMEDY SPECIFIC VIOLATIONS

8817 SECTION 8(a)(1)

8817-0300 Rescind changes in work schedule

RJR Communications, Inc. **248 NLRB No. 124**
(resume discriminatorily discontinued 6 o'clock newscast)

8817-1200 Permit union to address employees on company time

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(E to give notice and equal time and facilities for U to respond to any address by E to its Ees on question of U representation; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(E to afford U right to deliver 30-minute speech to Ees on working time prior to any Bd election which may be scheduled in which U is a participant; this provision to apply for 2-year period from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(if E convenes any Ees at any plant during 2-year period following entry of order and addresses Ees on question of U representation, E ordered to give U reasonable notice thereof and afford 2 U representatives opportunity to attend and, upon request, permit U representative to address Ees for same amount of time)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(if w/i next 2 years, Bd schedules election in which U participates, Bd ordered E to afford at least 2 U representatives reasonable access to each facility to deliver 30 minute speech to Ees on working time; date thereof to be w/i 10 working days before but not w/i 48 hours prior to any election)

8817-1500 Grant union reasonable access to employer's facilities in nonwork areas during employees' nonwork time

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(granted for 6-month period upon request; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

8817-1600 Grant union reasonable access to bulletin boards

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(and to all places where notices to Ees are customarily posted granted for period of 6 months upon request)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to grant U, upon request made w/i 2 years of date of order herein, reasonable access to plant bulletin boards and to cumstomary posting places at each plant for 1 year from date of request)

8817-2000 Give union list of employees' names and addresses

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(upon request made w/i 1 year; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to immediately furnish, upon U's request, lists of names, addresses, and classifications of all Ees at each plant as of latest available payroll date and to furnish corrected current list to U at 6 month intervals during next 2 years)

8817-6100 Expunge references to disciplinary action from employee's records

Southwestern Bell Telephone Company **251 NLRB No. 061**
(written confession to theft of E's property obtained at interview in which Ee denied his *Weingarten* rights)

Texaco, Inc. **251 NLRB No. 063**
(where reprimand imposed on Ee as result of interview with Ee at which his U representative was unlawfully required to remain silient and Ee's admissions resulted in discipline)

Illinois Bell Telephone Company **251 NLRB No. 128**
(where Ee was discharged based on information obtained during interview at which she was unlawfully denied presence of representative, reinstatement proper to rectify harm caused; also all references to disciplinary action taken must be expungent from E's files)

Sullair P.T.O., Inc. **250 NLRB No. 104**
(reference to 8(a)(1) discharge)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

Babcock

8817-8900 Orders concerning solicitation and/or distribution rules

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(Bd's overly broad order must be specifically amended to show that solicitation and distribution of literature by Ees may be done only when both soliciting Ee and solicited Ee are on personal time, company authorized work breaks or during nonworking hours, and in area of plant outside normal work area)

8817-9300 Award backpay for reduction in hours worked or pay raise withheld

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

8817-9700 Grant access to union representatives

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(for 2-year period, upon U's request and w/o delay, E ordered to permit reasonable number of U representatives access to nonwork areas for reasonable periods of time for purpose of communicating orally and in writing with Ees during nonwork periods)

8833 SECTION 8(a)(2)

8833-1400 Disestablish company union

Streamway Division of The Scott

South Nassau Communities Hospital **247 NLRB No. 067**
(*disestablishment* of Nursing Advisory Committee *not ordered,* since there was no allegation of E domination of Committee)

Hart Ski Mfg. Co., Inc. **JD-11-80**

8833-2800 Withdraw and withhold recognition

Streamway Division of The Scott

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E to withdraw recognition of independent U it had assisted and any successor in E's stores in location involved in this case)

Visu-Craft By H.B.S., Inc. **JD-887-79**
(no refund of dues which E collected pursuant to illegal checkoff agreement ordered where all but one Ee joined U voluntarily; nor was E ordered to cease recognizing U since no question of validity of recognition)

8833-2867 Permanent withdrawal of recognition ordered where

8833-2867-2500 Employer dominated union

Hart Ski Mfg. Co., Inc. **JD-11-80**

8833-2867-3700 Employer assisted union

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(cease recognizing or bargaining with Ee grievance committee or anyone elected by Ees to become member thereof as the representative of its Ees concerning wages, hours or terms and conditions of employment, including grievances)

8833-4200 Rescind contract

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd's actions to remedy U's failure to represent Ee enforced; Bd set aside collective bargaining agreement, decertified U, and ordered U to make Ee whole for differential between journeyman's scale and his actual wages for entire time of his employment with E)

8833-7900 Cease dealing with supervisor as union agent

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd's remedies of ordering E and multi-E association to cease and desist to recognize or deal with supervisor as U official and ordering E not to permit supervisor to serve as U official held proper)

8833-8800 Inform employees solicitation for union will not be permitted

World Wide Press, Inc. **JD-(SF)-12-80**
(E, already subject to order requiring it to disestablish assisted U, ordered to inform Ees that solicitation and collection of dues on behalf of assisted U was in derogation of incumbent U's representative status and will not be permitted)

8833-9200 Reimbursement of dues paid under contract

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

Visu-Craft By H.B.S., Inc. **JD-887-79**
(no refund of dues which E collected pursuant to illegal checkoff agreement ordered where all but one Ee joined U voluntarily; nor was E ordered to cease recognizing U since no question of validity of recognition)

8850 SECTION 8(a)(3)

8850-0100 Generally

O.K. Machine

8850-0300 Withdraw and withhold recognition

O.K. Machine

8850-0700 Offer employment to applicant

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(discriminatee entitled to backpay from date he would have stated work at E had E not unlawfully withdrawn offer of position notwithstanding E may be overstaffed since at time of acceptance of job offer there was vacancy)

8850-2500 Resume discriminatorily discontinued position or operations

Amber Delivery Service, Inc. **250 NLRB No. 016**
(rescind changes in working conditions in duties of owner-operator Ees where purpose of changes was unlawful attempt to convert Ee status to that of independent contractor)

C-F Air Freight, Inc. **247 NLRB No. 60**
(E, who unlawfully closed its facility and subcontracted Ee's work, ordered to resume operations formerly performed at closed facility either at its former location or some other reasonable location w/i metropolitan area, where it was not shown that E would suffer undue hardship by application of Bd's usual remedies; moreover, E required to use its own Ees to perform work and to give preference for positions to discriminatees herein)

C-F Air Freight, Inc. **247 NLRB No. 60**
(in ordering resumption of unlawfully closed operation, Bd rejected E's defense that order was *unfair* and *unjustified* since it was not supported by evidence, and it was not shown that E would suffer undue hardship by application of Bd's usual remedies)

8850-3000 Restore benefits and privileges

Schorr Stern Food Corp. **248 NLRB No. 050**
(discriminatees who worked more than 24 hours in holiday week, which was basis for GC's specification that they had worked *full time* as required under contract held entitled to holiday pay)

8850-3010 Wage increase

Schorr Stern Food Corp. **248 NLRB No. 050**
(Ees held entitled to receive benefit of pay increase, which they would have been eligible to receive, but for discrimination against them, for period from 6 months prior to filing of charge to date of expiration of contract, notwithstanding E's claim that intervening memorandum agreement with U altered unit represented by U)

8850-3045 Vacations and vacation pay

Schorr Stern Food Corp. **248 NLRB No. 050**
(discriminatees held entitled to vacation pay, depending on length of service, where E produced no evidence that discriminatees could not under any circumstances have received vacations or vacation pay during period in question; any doubt in such regard must be resolved against wrongdoing E)

Schorr Stern Food Corp. **248 NLRB No. 050**
(fact that any discriminatee quit w/o notice held no basis for denial of vacation and sick pay benefits)

8850-3080 Sick leave benefits

Schorr Stern Food Corp. **248 NLRB No. 050**
(fact that any discriminatee quit w/o notice held no basis for denial of vacation and sick pay benefits)

8850-4000 Rescind discriminatory policy

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(E to reinstate Ee bonus and make Ees whole for any bonus accrued prior, or subsequent, to discontinuation of bonus payments)

8850-4300 Extension of contract coverage

O.K. Machine

8850-4500 Expunge discriminatory disciplinary action from record

Suburban Ford, Inc. **248 NLRB No. 051**
(--and refrain from making any such report to prospective E, employment agency, unemployment insurance office or reference seeker or inquiry)

C

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(expunge warning notices, suspensions or other notations dealing with Ees' discriminatory terminations; write letter to each affected Ee informing him or her of compliance herewith)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(and advise Ee in writing (that) Respondent has done so)

8850-4700 Relocation expenses

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8850-5000 Assign work on nondiscriminatory basis

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(offer discriminatee chance to drive large truck as frequently as he did prior to U activity commenced)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(E ordered to expunge unexcused absences from records of Ees who were unlawfully charged therewith)

8850-5100 Preferential hiring list

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8850-7500 Make payments to union welfare and pension funds which would have been made if not illegally terminated

Schorr Stern Food Corp. **248 NLRB No. 050**

8850-7700 Make payment for discriminatees' idle equipment

Campo Slacks, Inc. and J

8850-8000 Promote discriminatee to supervisory position

Ford Motor Company **251 NLRB No. 066**

8850-8300 Restore status of discriminatees disciplined for unexcussed absences

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(E ordered to restore discriminatees who were unlawfully charged with unexcused absences, and as result may have been assessed some form of disciplinary action, to status they would have otherwise occupied had they not been so charged, and to make them whole for any loss of earnings th may have suffered as result of E's action)

8867 SECTION 8(a)(4)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(permit Ees and U to use lunchroom for U meetings as in past, and notify them they have permission to do so)

8883 SECTION 8(a)(5)

8883-0100 Generally

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(E ordered to pay such portion of costs attributable to deletion from records of irrelevant nonbargaining unit information requested by U; accordingly, unless parties can agree on breakdown between reproduction and deletion costs, amount owed by Us shall be determined during compliance proceedings)

Arizona Public Service Company **247 NLRB No. 054**
(in case involving E's unlawful refusal to bargain with U over subcontracting of unit work, it was held that affirmative orders should be appropriate to particular situation requiring redress and should be tempered by practical considerations)

8883-1200 Terminate or rescind present arrangements

Scott Printing Corporation **249 NLRB No. 134**
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante*, since contract of sale was *sham* transaction)

8883-1300 Furnish data concerning employment aptitude tests

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(ct declined to enforce Bd order requiring E to disclose certain information about employment aptitude tests requested by U in order to prepare for arbitration of grievances; in view of sensitive nature of information, minimal burden E's offer, upon receipt of consents from examinees, to disclose information placed upon U, and absence of evidence that E acted to frustrate U in discharge of its statutory responsibilities, ct rejected Bd's conclusion that E violated Act)

8883-1400 Resume discontinued operations

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

Wellman Industries, Inc. **248 NLRB No. 029**
(reopen closed division and set aside layoffs and transfers, restore eliminated jobs and set aside reductions in pay and classifications if U so requests)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(and reinstate Ees laid off)

Lion Uniform, Janesville Apparel Division **247 NLRB No. 123**
(where ALJ approved settlement agreement which did not require E who had violatively transferred work to another plant to resume operations, Bd reversed ALJ's approval in light of fact that no evidence that such resumption would endanger E's economic viability)

8883-1600 Terminate subcontracting and resume operation

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

8883-2000 Reinstate pension or insurance plan administrator

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

8883-2400 Pay damages as compensation for refusal to bargain

Peerless Roofing Co., Ltd. **247 NLRB No. 072**
(liquidated damages of 10 percent for each month E does not contribute to pension, welfare and similar trust funds found appropraite where contract, though expired, provide such remedy and additional payment was interpreted to mean 10 percent on entire sum due so not to constitute an unreasonable penalty)

8883-2500 Grant representation status at new location

Universal Security Instruments, Inc. **250 NLRB No. 092**
(apply terms of collective bargaining agreement to Ees at new location)

8883-2600 Pay backpay because of discontinuance of operations

Ferro Mechanical Corp. **249 NLRB No. 083**

8883-2700 Pay relocation expenses

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8883-2800 Rescind unilateral changes

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 251 NLRB No. 027
(ALJ's failure to include in his recommended order requirement that E rescind any unilateral changes he may have instituted subsequent to commencement of its bargaining obligation, held not improper; retroactive bargaining order re-establishes conditions existing before E's ULP activity began, and implicit in order herein is E's obligation to bargain over unilateral changes at U's request; moreover, there are no facts or allegations which could support finding that E instituted, or refused to bargain, over unilateral changes since onset of its bargaining obligation)

Charmer Industries, Inc. 250 NLRB No. 031
(Es required to cancel unilaterally instituted change in bill collection procedures whereby salesmen replaced delivery drivers in making c.o.d. collections, and to restore status quo ante to conditions which existed prior to change)

Talbert Manufacturing, Inc. 250 NLRB No. 026
(respondent if requested by U, to withdraw wage proposals it has implemented and reinstate cost-of-living raises)

8883-2825 Disciplinary action taken without consulting union

Charmer Industries, Inc. 250 NLRB No. 031
(rescind any disciplinary actions which occurred because, under Es' unilateral change in procedures of collecting c.o.d. payments from customers, salesmen may have lost commissions or accounts due to their failure to personally collect such payments)

8883-2837 Make payments into trust fund

Ortiz Funeral Home Corp. (Local 1034, Teamsters, 250 NLRB No. 100
(E to make welfare fund and severance and retirement fund payments it had failed to make on behalf of unit Ees)

Traffic Control Services, Inc., and Its Trustee in Bankruptcy, Albert Rau 249 NLRB No. 077
(whether E must pay additional amounts into benefit fund in order to remedy unlawful discontinuance of payments left to compliance stage to be determined by provisions pertaining to each fund or evidence of loss directly attributable to unlawful withholding of payments)

8883-2850 Resume deduction and transmittal of dues pursuant to checkoff

8883-2850-5000 Reimburse union for dues not transmitted

Independent Stave Company 248 NLRB No. 025
(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

8883-2887 Reinstate number of hours worked as they existed

Wellman Industries, Inc. 248 NLRB No. 029
(restore discontinued third shifts and make overtime voluntary if U so requests)

8883-2900 Preferential hiring

Ferro Mechanical Corp. 249 NLRB No. 083
(place on preferential hiring list all Ees unlawfully terminated as result of plant closure w/o bargaining and offer reinstatement in event E resumes any part of terminated operations)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8883-4200 Restore benefits and privileges

8883-4256 Health care services and benefits

Keystone Steel

8883-4268 Bonus

Talbert Manufacturing, Inc. 250 NLRB No. 026
(E to reinstate Ee bonus and make Ees whole for any bonus accrued prior, or subsequent, to discontinuation of bonus payments)

Production Plated Plastics, Inc. 247 NLRB No. 076
(E ordered to pay Christmas bonus and continue to pay bonus until it bargains in good faith with U or until U refuses to bargain in good faith over its cessation)

8883-4294 Hot lunch program

Henry Vogt Machine Company 251 NLRB No. 040
(E to reinstate subsidized cafeteria lunch privileges)

8883-4500 Restitution for unilateral changes

Henry Vogt Machine Company 251 NLRB No. 040
(E to make Ees whole for any losses occasioned by its withdrawing privilege of eating lunch at E's subsidized cafeteria)

Charmer Industries, Inc. 250 NLRB No. 031
(Es ordered to reimburse salesmen for added time and cost of performing their sales' duties resulting from Es' unlawful unilateral change in bill collection procedures whereby salesmen replaced delivery drivers in making c.o.d. collections)

8883-4900 Offer to accept grievance for processing

Southwestern Bell Telephone Company 251 NLRB No. 061
(in order to allow U to file grievance over Ee's discharge after they receive information which E originally refused to provide)

Newspaper Printing Corporation JD-203-80
(parties ordered to proceed directly to arbitration where E unlawfully refused to submit grievance to Joint Standing Committee which was third step in grievance procedure since to remand for consideration at third step *would merely be accomodating run-around being engineered by Respondent and... requiring an empty ritual*)

8883-5400 Cease solicitation for dominated or assisted union

Cas Walker's Cash Stores Inc. 249 NLRB No. 041

8883-5600 Grant union representative access to plant

Yet Wah Restaurant 251 NLRB No. 010

8883-7500 Restitution for wages and benefits under contract

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall 249 NLRB No. 009
(make Ees whole for medical expenses incurred which would have been covered by medical insurance plan if respondents had complied with contract and paid into contractual trust funds)

8883-8500 Bargain within a time certain from date of Board order

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073
(for a period of no less than 1 year from date on which Respondent fully complies with other terms of (instant) Order)

8883-9600 Reimburse union for loss of dues not checked off

Ortiz Funeral Home Corp. (Local 1034, Teamsters, 250 NLRB No. 100

United States Steel Corporation 248 NLRB No. 090
(Es to make U whole for monetary losses resulting from Es' unilateral failure to check off dues and failure to issue Ees, while students, separate checks covering dues)

650 ORDERS AGAINST UNIONS

1100 CEASE-AND-DESIST ORDERS

1125 BROAD ORDERS

1125-0100 Generally

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(no broad order in view of Bd's discontinuation of automatic adoption of broad orders in discharge cases and fact that finding by other judicial bodies of violations of other statues by respondent international U does not establish proclivity to violate this Act)

1125-0150 Proclivity to violate Act as basis for broad order

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(no broad order in view of Bd's discontinuation of automatic adoption of broad orders in discharge cases and fact that finding by other judicial bodies of violations of other statues by respondent international U does not establish proclivity to violate this Act)

1150 NARROW ORDERS

International Photographers of the Motion Picture Industry, Local 659, et al.(Medway Productions, Inc.) **250 NLRB No. 052**
(sufficient in circumstances of case)

1175 CEASE-AND-DESIST ORDERS RELATING TO SPECIFIC VIOLATIONS

75-5000 Section 8(e)

1175-5000 Section 8(e)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

1600 ORDERS TO ALLEVIATE EFFECT OF FRIVILOUS LITIGATION

1633 What constitutes frivilous litigation

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**
(litigation of *container* case not frivolous notwithstanding great body of prior Bd cases where circuit ct recently reversed Bd decision in similar case)

2200 ORDERS RELATING TO AGREEMENTS

2201 GENERALLY

Baine Service Systems, Inc. **248 NLRB No. 087**
(cease giving effect to and cancel contract entered into by E and U which lacked majority status)

3300 ORDERS RELATING TO REINSTATEMENT

4400 BACKPAY ORDERS

4413 AS REMEDY FOR SECTION 8(e) VIOLATIONS

4413 AS REMEDY FOR SECTION 8(e) VIOLATIONS

4413-5000 Not appropriate

4413-5000 Not appropriate

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

4417 JOINT BACKPAY LIABILITY

4417-2000 International and local union

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**

4417-8000 Union and employer

4417-8025 Jointly and severally liable

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

4450 BACKPAY PERIOD

4450-5000 End of period

4450-5009 Union notification of both employer and discriminatee that it has no objection to discriminatee's reinstatement or reemployment

Plumbers, Local Union No. 83 (Power City Plumbing

Plumbers, Local Union No. 83 (Power City Plumbing

4483 ULPS INVOLVED

4483-2500 Refusing to process grievance

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd properly resolved uncertainty in merit of grievance against U which created such uncertainty by unlawful act, through its improper investigation of grievance which made it impossible to determine merits of grievance)

4483-5000 Illegal fines

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing

5500 REIMBURSEMENT ORDERS

5511 DUES, INITIATION FEES, AND ASSESSMENTS

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for payment of initiation fees or dues resulting from enforcement of agreement unlawful under 8(e))

Actors' Equity Association **247 NLRB No. 172**
(where U maintained and enforced U security requirement that non-resident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from resident members, U ordered to reimburse all alien members for difference between amounts they paid as dues and amounts they would have paid if considered resident members)

Local 572, Teamsters (Ralphs Grocery Company) **247 NLRB No. 108**

5511—Cont.

(although U sought and caused unlawful discharge of Ee for failing to pay dues pursuant to U-security agreement, Bd did not order refund of reinitiation fee paid to obtain reinstatement and, instead, awarded Ee only loss of earnings incurred, since there was no evidence of inconsistent enforcement and no allegation that Ee did not actually owe the fee under U's bylaws)

5522 HIRING HALL FEES

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

5522-3300 Service or referral fees

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U to reimburse each applicant or Ee who made payments to U for its referral system when in actuality no such system existed; liability limited by Section 10(b) to 6-month period prior to filing and service of original charge)

5555 REINSTATEMENT FEES

Local 572, Teamsters (Ralphs Grocery Company) **247 NLRB No. 108**
(although U sought and caused unlawful discharge of Ee for failing to pay dues pursuant to U-security agreement, Bd did not order refund of reinitiation fee paid to obtain reinstatement and, instead, awarded Ee only loss of earnings incurred, since there was no evidence of inconsistent enforcement and no allegation that Ee did not actually owe the fee under U's bylaws)

5570 LITIGATION COSTS AND EXPENSES

5570-0100 Generally

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(E's request that U be required to reimburse it for expenses incurred in defending Section 301 suit, filing of which was held to be violative, since object was to compel arbitration of discriminatorily motivated grievance concerning alleged misclassification of Ee who had crossed picket line, denied; cases involving suits by Es against individuals whose ULP charges had been dismissed distinguished as to level of misuse of judicial process)

5577 WELFARE PENSION AND OTHER FUND PAYMENTS

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Operating Engineers, Local Union No. 12; et al. (Maas

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for their contributions to U benefit funds as result of enforcement of agreement unlawful under 8(e))

5582 LOSS OF EARNINGS

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for loss of income resulting from enforcement of agreement unlawful under 8(e); *make whole* remedy inappropriate for 8(e) violations)

International Longshoremen's Association, Local 1414 **JD-357-80**
(make whole discriminatee for any loss of earnings he may have suffered by not being referred to jobs in proper sequence as called for in U's bylaws because of outstanding debt to U's credit)

6600 BARGAINING ORDERS

7700 NOTICE PROVISIONS

7742 MANNER OF NOTICE

7742-2500 Mailed

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**

7770 PERSONS REQUIRED TO SIGN NOTICES

7770-2500 Union business agent

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(U business agent not required to personally sign and read notice as requested by GC where he was not personally involved in acts of violence of threats of violence)

8200 REPAY MONETARY PENALTIES IMPOSED ON EMPLOYER FOR USE OF NONUNION MATERIALS

8800 AFFIRMATIVE ORDERS RELATING TO SPECIFIC VIOLATIONS

8811 SECTION 8(b)(1)

8811-3300 Section 8(b)(1)(A)

8811-3320 Keep records on hiring and referral operations

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ordered, notwithstanding U's failure to maintain written standards and records held not violation per se)

8811-3324 Expunge unlawful discipline from records

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**

8811-3334 Reimburse employee for comparable health insurance secured at own expense

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing

8811-3335 Reimburse employee for lost wages

International Longshoremen's Association, Local 1414 **JD-357-80**
(make whole discriminatee for any loss of earnings he may have suffered by not being referred to jobs in proper sequence as called for in U's bylaws because of outstanding debt to U's credit)

8811-3378 Revocation of certification

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd ordered proper remedy in revoking U certification where U did not fairly represent all those in bargaining unit)

8811-6700 Section 8(b)(1)(B)

8811-6750 Expunge unlawful discipline from records

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(expunge record of unlawful suspension)

8811-6783 Notify employer's representative and employer that Union has no objection to representative's employment or selection as representative

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer)

8822 Section 8(b)(2)

8822-3100 Without regard to membership in or payment of permit fees to union

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(U ordered to notify E in writing and to notify discriminatees in writing that it has no objection to their employment with unimpaired seniority and with all other rights and privileges previously enjoyed)

8833 SECTION 8(b)(3)

8833-6100 Furnish information relevant to bargaining process

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**
(U must formally request from Fund administering health and welfare plan that it provide information sought by E)

Abestos Workers, Local No. 80 (West Virginia Master Insulators Association) **248 NLRB No. 022**
(information relating to U's referral system)

8888 SECTION 8(e)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for loss of income resulting from enforcement of agreement unlawful under 8(e); *make whole* remedy inappropriate for 8(e) violations)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for payment of initiation fees or dues resulting from enforcement of agreement unlawful under 8(e))

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for their contributions to U benefit funds as result of enforcement of agreement unlawful under 8(e))

8888-0100 Generally

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(make Ees whole remedy generally inappropriate and overbroad in terms of 8(e) violations)

675 PROCEEDINGS TO DETERMINE BACKPAY LIABILITY (FOR COMPUTATION OF BACKPAY SEE HEADINGS UNDER 625-4433)

0100 GENERALLY

Ace Beverage Co. **250 NLRB No. 066**
(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

Ace Beverage Co. **250 NLRB No. 066**
(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

1000 BACKPAY SPECIFICATION PROCEEDINGS

2000 TIME OF DETERMINATION

2075 DETERMINATION LEFT TO COMPLIANCE STAGE OR SUPPLEMENTARY PROCEEDING

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(interest payments on additional amounts E must pay into benefit funds to satisfy Bd's *make-whole* remedy)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(question of whether E must pay any additional amounts into benefit funds in order to satisfy Bd's *make whole* remedy left to compliance stage of instant case, since provisions of Ee benefit fund agreements were variable and complex)

Campo Slacks, Inc. and J

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(fruther hearing required to determine if 2 Ees quit during strike or are eligible for backpay)

Trojan Transportation, Inc. **249 NLRB No. 084**
(period for computation of backpay and seniority commenced from date of unlawful discharges, notwithstanding E's contention that period should have commenced from date discriminatees' replacements were added to work force, since discriminatees were not recalled but were unlawfully discharged; however, E permitted to attempt to mitigate its backpay liability by showing in compliance proceedings that discriminatees would have been laid off for economic reasons at some time after date of discharges, had Ees not been unlawfully discharged)

Traffic Control Services, Inc., and Its Trustee in Bankruptcy, Albert Rau **249 NLRB No. 077**
(whether E must pay additional amounts into benefit fund in order to remedy unlawful discontinuance of payments left to compliance stage to be determined by provisions pertaining to each fund or evidence of loss directly attributable to unlawful withholding of payments)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(Bd left to compliance stage question of whether E must pay additional amounts into various funds in order to satisfy make-whole remedy since provisions of Ee benefit fund agreements were variable and complex and Bd did not provide at adjudicatory stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments)

Bide-A-Wee Home Association **248 NLRB No. 110**
(E not precluded by Bd's order from attempting to prove in compliance stage of proceeding that unlawfully discharged strikers incurred willful loss of earnings by continued participation in strike after their date of discharge)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(ALJ's ruling to exclude evidence of E's alleged unconditional offer of reinstatement, appropriate since issue of alleged offer of reinstatement is matter best raised during compliance stage of the proceeding)

Schorr Stern Food Corp. **248 NLRB No. 050**
(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

First Termite Control Co., Inc. **247 NLRB No. 106**
(E's contention that it made valid offers of reinstatement to discriminatees left to compliance stage of proceedings)

H. S. Brooks Electric, Inc., K

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(extent to which discriminatees failed to avail themselves of hiring hall referrals or to sign roster and participate in new referral system instituted after issuance of original complaint alleging unlawful refusal to refer and operation of hiring hall in unlawful manner where new referral system was subject of recent charge)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(details of how many, if any, permanent replacements were hired and classification in which they worked, their hours, rates of pay, and the like, relegated to compliance stage of instant proceeding)

4000 PLEADINGS

4025 SUFFICIENCY OF PLEADINGS

4025-4000 Grounds for disagreement must be stated

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(ALJ's reliance on gross earnings formula contained in E's amendment to its ans to backpay specification held appropriate, notwithstanding GC's contention that reliance on formula did not satisfy requirements of Sec. 102.54(b) of Bd's R/R, since Respondent's original ans satisfied Section's requirements and GC did not object to proposed amendment)

4050 AMENDMENT OF PLEADINGS

4050-3300 Both General Counsel and respondent bound by pleadings

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(ALJ's reliance on gross earnings formula contained in E's amendment to its ans to backpay specification held appropriate, notwithstanding GC's contention that reliance on formula did not satisfy requirements of Sec. 102.54(b) of Bd's R/R, since Respondent's original ans satisfied Section's requirements and GC did not object to proposed amendment)

4075 AFFIRMATIVE DEFENSES

4075-5000 Defenses which may be raised in backpay proceeding

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

4075-6700 Defenses which may not be raised in backpay proceeding

H. S. Brooks Electric, Inc., K

6000 BURDEN OF PROOF

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

6017 GENERAL COUNSEL HAS BURDEN OF PROVING GROSS BACKPAY

Matlock Truck Body

6017-3300 Estimates of actual income sufficient

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**

675-PROCEEDINGS TO DETERMINE BACKPAY LIABILITY (FOR COMPUTATION OF BACKPAY SEE HEADINGS UNDER 625-4433)

6017-6700 ALJ must recommend most accurate method of computing backpay, not merely determine whether General Counsel's formula is reasonable

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(notwithstanding parties stipulated to interim earnings figures, ALJ's rejection of gross earnings formula to which interim earnings were keyed caused ALJ to reject interim earnings when they could not be utilized in gross earnings formula adopted by ALJ)

6033 RESPONDENT HAS BURDEN OF PROVING DEDUCTIONS FROM GROSS BACKPAY

6033-0100 Generally

Matlock Truck Body

6033-2500 *Make-up* increases

Plasticrafts, Inc. **248 NLRB No. 161**
(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

6033-3300 Willful idleness

Highview, Inc. **250 NLRB No. 090**
(test of whether discriminatee has made reasonable search for employment is whether he/she had dilligently sought other employment during entire backpay period, and fact that discriminatee had no interim earnings during backpay period is not probative upon issue of whether discriminatee made diligent search for work)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(Ee did not engage in willful loss of earnings during backpay period where he left interim employment because he was not receiving benefit of having health, welfare, and pension contributions made to U funds and wanted to work where such would be done)

DeLorean Cadillac, Inc. v. N.L.R.B. **614 F.2d 554 (C.A. 6) (1980)**
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

6033-5000 Interim earnings

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(notwithstanding parties stipulated to interim earnings figures, ALJ's rejection of gross earnings formula to which interim earnings were keyed caused ALJ to reject interim earnings when they could not be utilized in gross earnings formula adopted by ALJ)

8000 PROCEDURE WHEN CLAIMANT IS UNAVAILABLE

8025 BACKPAY PLACED IN ESCROW UNTIL CLAIMANT CAN BE EXAMINED

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(held in escrow for period not to exceed 1 year at which time funds returned to E, however E still has obligation to discriminatee)

Matlock Truck Body

9000 SETTLEMENTS OF BACKPAY

9033 NECESSARY PARTIES

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(deletion of trustee in bankruptcy as party respondent from original complaint pursuant to ct order does not bar GC from raising issue of trustee's derivative liability for first time in backpay proceeding)

9067 GROUNDS FOR SETTING ASIDE

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(where parent company was not named in proceeding until after ct remanded to Bd, it will not be named as R as it was never afforded opportunity to defend itself against ULP charges or litigate its relationship with E; determination can be made at compliance stage of proceeding)

700 GENERAL LEGAL PRINCIPLES

712 AGENCY PRINCIPLES

2500 COMMON LAW AGENCY PRINCIPLES APPLICABLE

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

5000 RESPONSIBIITY OF EMPLOYER OR UNION FOR ACTS AND STATEMENTS OF AGENTS AND OTHERS

5014 BASIS OF RESPONSIBILITY

5014-0100 Generally

5014-0120 Actual authority

F

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

5014-0140 Apparent authority

F

Tylertown Wood Products **251 NLRB No. 048**
(local minister who, allegedly acting as E's agent, made unlawful statements to Ees held not agent of E, since he was not placed in position to be identified with management in eyes of Ees and to translate to them policies and desires of management)

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Streamway Division of The Scott

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(E held responsible for statements of *yard foreman,* where E held him out as representative of management whose words could reasonably be understood to reflect position of Company)

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(fact that agent itself was not sure it possessed authority to negotiate not controlling; it is apparent authority that it exhibits to third party that controls principal's responsibility)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(personnel office Ee held agent of E where he was placed in *strategic position* so that his apparent authority to act on E's behalf could be fairly implied and Ees could reasonably believe he reflected E's policy)

Broad Street Lincoln Mercury, Inc. **JD-208-80**
(E responsible for antiU campaign which it did nothing to disavow and which it permitted former owner and operator to carry on on its premises; former owner was parent of present owners and leased them one of buildings they used)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(whether or not individual considered to be *boss* fell w/i statutory definition of *supervisor* held that such individual was at all relevant times so clearly identified with E's management that he must be concluded to be agent of E)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(contention that E's son was rank-and-file Ee rejected where E gave son *Guidelines for Management and Supervisor Personnel Prior to Representation Election* which demonstrated that son was aligned with management and at least apparent agent of E)

5014-0190 Adoption or ratification

F

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

5028 RESPONSIBILITY OF EMPLOYER FOR ACTS OF OTHERS

5028-1200 Interdependent relationships with other employers

5028-1233 Familial relationship

Cardinal Heating and Cooling, Inc. **JD-835-79**
(contention that E's son was rank-and-file Ee rejected where E gave son *Guidelines for Management and Supervisor Personnel Prior to Representation Election* which demonstrated that son was aligned with management and at least apparent agent of E)

5028-1267 Economic relationship

F

5028-2500 Nonsupervisory employees

5028-2512 Acting in apparent concert with desires of employer

Regal Shoe Shops #2421

5028-2537 Authority to act may be inferred from

5028-2537-4000 Employer's failure to disavow conduct

Sentry Investigation Corp. **249 NLRB No. 130**
(violation of Section 8(a)(1) where E failed to disavow threats of shop steward that if Ees changed bargaining representative they would lose their jobs to members of new representative with more seniority)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

5028-2550 Company time, use of, indication that employee acts for employer

Hart Ski Mfg. Co., Inc. **JD-11-80**
(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

5028-2562 Employees have just cause to believe person acting for employer

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E responsible for acts of nonsupervisory Ee to whom he accorded visibly superior status, and whom he used as conduit to Ees concerning job assignments and layoffs so that Ees reasonably believed him allied with and speaking for management)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

5028-2562—Cont.

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(whether or not individual considered to be *boss* fell w/i statutory definition of *supervisor* held that such individual was at all relevant times so clearly identified with E's management that he must be concluded to be agent of E)

5028-2575 Related to supervisor

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(ct was extremely dubious that evidence showing one of Ee's brothers was co-owner of plant and that another was a supervisor supported Bd's finding of agency; ct noted that its failure to deal with agency issue, in face of E's concession that substantial evidence supported ULP findings, in no way suggests that Ee who is related to company officials is, w/o more, an agent of E so that she may be precluded from expressing views on unionization during election campaign)

5028-2583 Family relationship to owner or officer

A-1 Building Materials
JD-828-79
(Ee son of owners of E found to be supervisor and agent of E where parents own 100% of company stock, father held son out to Ees as his trainee successor and son gave work instructions and permission to leave work when his father was absent)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(ct was extremely dubious that evidence showing one of Ee's brothers was co-owner of plant and that another was a supervisor supported Bd's finding of agency; ct noted that its failure to deal with agency issue, in face of E's concession that substantial evidence supported ULP findings, in no way suggests that Ee who is related to company officials is, w/o more, an agent of E so that she may be precluded from expressing views on unionization during election campaign)

5028-5000 Outsiders

5028-5010 Attorneys or other advisors

Flair Molded Plastics, Inc. **250 NLRB No. 017**
(attorney of record)

Streamway Division of The Scott

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(attorney who had handled cases and other legal matters for E held E's agent acting as go-between with favored U in E's assistance and support of favored U, notwithstanding attorney was also U's agent with authority to sign contract with E on U's behalf)

5028-5030 Civic officials and others prominent in community

Tylertown Wood Products **251 NLRB No. 048**
(local minister who, allegedly acting as E's agent, made unlawful statements to Ees held not agent of E, since he was not placed in position to be identified with management in eyes of Ees and to translate to them policies and desires of management)

5028-5045 Lessor

5028-5045 Lessor

Broad Street Lincoln Mercury, Inc. **JD-208-80**
(E responsible for antiU campaign which it did nothing to disavow and which it permitted former owner and operator to carry on on its premises; former owner was parent of present owners and leased them one of buildings they used)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

5028-5054 Labor consultant

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(interrogation of Ees by E's labor relations consultant violative where he neither advised them of purpose of questions nor indicated to them that participation was voluntary)

5028-5090 Welfare fund and trustees

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

5028-6200 Employer association members and officers

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E-association is clothed with authority to negotiate for E, its' actions will bind E notwithstanding it misrepresented to U or failed to inform U of crucial facts pertinent to basis or extent of its authority)

5028-7500 Supervisory employees and management representatives

5028-7514 Authorization and ratification by employer of supervisor's acts

Flexsteel Industries, Inc. **JD-(SF)-274-79**
(supervisor's friendly warnings to Ees concerning their U activities which were not ratified by or even know by E, not attributable to E)

5028-7528 Indicia of power to bind

5028-7528-0100 Generally

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(E was bound by assistant supervisor's post-election statements, notwithstanding fact that he exercised supervisory responsibilities relatively infrequently)

5028-7528-5000 Minor supervisory duties

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(no violation, where no evidence E authorized remarks of *low level supervisor;* further, where *low level supervisor* had voted in election and Ees knew that his anti-U bias was personal Ees did not have just cause to believe he had made threatening remarks on behalf of management)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(comments by *low level supervisor* not conclusive as to E's liability since statements by low-level, marginal supervisors are less likely to influence Ees' decision than statements by high level officials which bear imprint of company policy)

5028-7570 Types of employees

5028-7570-1200 Foreman or immediate supervisor

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

5028-7570-2400 Individual trustees of union welfare fund

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

5028-7570-4800 Personnel counselor or staff member

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(personnel office Ee held agent of E where he was placed in *strategic position* so that his apparent authority to act on E's behalf could be fairly implied and Ees could reasonably believe he reflected E's policy)

5028-7570-5400 Personnel officials

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

5042 RESPONSIBILITY OF UNION FOR ACTS OF OTHERS

5042-6700 Agents

5042-6701 Generally

5042-6701-5000 Agency may be established by conduct

5042-6701-5025 Failure to repudiate conduct

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(where U business representative was present and nodded his head when U member threatened Ee with physical violence for refusing to join strike and for failing to honor U's picket line, U held responsible for the threats to Ee, since U business representative's conduct constituted tacit approval of the member's threats)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) **JD-195-80**
(U held responsible for misconduct of picketers and students making common cause with picketers, since E acquiesced in and ratified such misconduct where picket captains failed to disavow or restrain misconduct)

5042-6783 Special types of agents

5042-6783-2000 Attorney

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

5042-6783-3200 Member of union official's family

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5042-6783-4000 Foreman

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5042-6783-7400 Employee committee members

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(shop steward and Ee committeemen held to have acted for U in requesting discharge of Ees, where GC established prima facie agency of steward and committeemen to act for U in matters of discharge and grievances, and U failed to rebut by adducing evidence that steward and committeemen were not agents or acted so far outside their actual, implied or apparent, authority as to require conclusion they did not bind U by their acts)

5042-6783-7800 Pickets, picket major's, etc.

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(U held responsible for pickets' several acts and threats of violence where U authorized and organized pickets to act as its representative, and in its interest under supervision of its business agent, and U failed to disavow or take action against offending strikers)

5042-6783-9000 Steward

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(shop steward and Ee committeemen held to have acted for U in requesting discharge of Ees, where GC established prima facie agency of steward and committeemen to act for U in matters of discharge and grievances, and U failed to rebut by adducing evidence that steward and committeemen were not agents or acted so far outside their actual, implied or apparent, authority as to require conclusion they did not bind U by their acts)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

5042-6783-9200 In-plant organizing committee members

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(threat by one member of inplant organizing committee to take another member to court because he quit going to U meetings, not unlawful absent actual or apparent authority)

5042-6783-9500 Rank-and-file employee

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(fact Ee had been active in U's organization campaign does not establish agency relationship between Ee and U absent evidence either authorized or condoned conduct)

5042-6783-9600 Union adherent

Connecticut Foundry Company **247 NLRB No. 145**
(fact that Ee serves as U observer at election or is prominant in organizing campaign does not make him U official and Bd is reluctent to set aside election due to conduct of such Ee)

5056 MEMBERS

5056-0100 Generally

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5070 DEFENSES

5070-6000 Repudiation by employer or union

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

5084 RATIFICATION OF ACTS OR STATEMENTS BY EMPLOYER OR UNION

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

725 CONTRACT LAW

0100 GENERALLY

0150 TECHNICAL RULES OF CONTRACT LAW NOT NECESSARILY CONTROLLING UNDER NLRA

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

3300 FORMATION OF A CONTRACT

3325 OFFER

3325-1700 Must be unequivocal

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(pre-strike agreement on certain contract terms contingent upon resolution of other unresolved major issues is not legally enforceable agreement)

3325-6700 When terminated

3325-6717 Rejection

3325-6717-3300 By counter offer

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

3325-6717-6700 By refusal

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

3350 ACCEPTANCE

3350-2500 Must embody all the terms

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(pre-strike agreement on certain contract terms contingent upon resolution of other unresolved major issues is not legally enforceable agreement)

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

6700 CONSTRUCTION OF CONTRACT

6733 CONTRACT INTERPRETATION

6733-4000 When there is an inconsistency between specific and general provisions, specific will qualify general

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(provision alleged to be violative of 8(e) not rendered lawful by another provision stating *any other exclusions from construction industry proviso, previously defined by NLRB or cts, shall continue to be applicable in interpreting (alleged unlawful provision); explicit self-contained and clearly illegal contractual provision ... will not be purged of illegality by vague and general savings clause*)

6750 PAROL EVIDENCE

6750-2500 Agreements prior to or contemporaneous with an integrated agreement are admissible in evidence

6750-2567 To prove facts rendering agreement void or voidable for illegality, fraud, duress, mistake or insufficiency of consideration

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(E's contention that there was mutual mistake of fact as to ending date of payroll period and date inserted in Stipulation for Certification upon Consent Election not grounds for relief because mistake by one party to agreement, where not induced by other falls on party making mistake)

8300 WITHDRAWAL FROM CONTRACT

9100 BREACH OF CONTRACT

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(contrary to E's contention that any breaches by it of strike settlement agreements with Us were nothing more than violations of U's private contract rights, Bd held such breaches were w/i cognizance of Act and must be remedied in the public interest; accordingly, since E's violations of agreements denied reinstatement of economic strikers who had done no more than engage in protected concerted activity, E's conduct was unlawfully discriminatory)

737 EVIDENCE

0100 GENERALLY

1400 JUDICIAL AND OFFICIAL NOTICE

1450 SPECIFIC FACTS NOTICED

1450-0900 Board decisions

Marriott Corporation **251 NLRB No. 180**
(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

Hospitality Motor Inn, Inc. (Hotel

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(to find U a labor organization)

1450-4500 Federal laws, regulations, decisions, publications, etc.

Central Freight Lines, Inc. **250 NLRB No. 063**
(affidavit of witness who died prior to hearing, admissable to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

1450-7200 Record in prior R proceeding involving same parties

Colorado Aggregate Company, Inc. **250 NLRB No. 169**
(as term *record* is defined in Sections 102.68 and 102.69 of Bd's R/R)

Wright

Spring City Knitting Company **249 NLRB No. 033**

1450-8100 Record in prior ULP case against same party

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(where E excepted to ALJ's taking official notice of its ULPs in prior case as evidence of E's U animus herein claiming few if any of its management personnel then employed still remained, Bd held E's prior ULPs may be noted as background here)

2800 BURDEN OF PROOF

Sierra Vista Hospital, Inc. **249 NLRB No. 066**
(E failed to meet its burden of proving that there was clear and present danger of conflict of interest as result of supervisory participation in positions of authority in nurses' association so as to compromise association's bargaining integrity)

Cashmere Lumber Company **JD-(SF)-93-80**
(burden is on party alleging supervisory status to prove that it, in fact, exists)

2850 BURDEN OF GOING FORWARD WITH PROOF

2850-0100 Generally

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

2850-0800 In objections to election proceeding

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(burden on party urging overturning of Bd decision which refused to set election aside)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(contention by E, in objecting to election, that U had created racially inflamatory atmosphere precluding fair election, rejected, where E failed to *supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election*)

2850-1100 Beginning burden rests on General Counsel

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(Bd has burden of proving that discharge was motivated by anti-U animus)

2850-1133 Discriminatory reason for discharge or other action

General Telephone Company of Michigan **251 NLRB No. 099**
(disciplining Ee for harassing two other Ees by various derogatory, threatening and vulgar remarks and spitting at one of them for their not having participated in strike held not violative where GC had not established that conduct was *prima facie* or, *in fact*, protected activity)

Kraft Foods, Inc. **251 NLRB No. 006**
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

2850-1133-5000 General Counsel may not rely on inferences

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. 098**
(where E's relocation of plant was based on legitimate economic reasons and E was under no legal duty to transfer unit Ees to new location, E's failure to transfer unit Ees while transfering non-unit Ees, not violative, notwithstanding that E did not offer legitimate business reasons for its disparate treatment of unit and not-unit Ees; GC did not claim that disparate treatment was illegally motivated, and it is presumed that an action was taken for lawful reasons, absent evidence of illegality)

2850-1186 Majority status of incumbent union

Siro Security Service, Inc. **247 NLRB No. 157**
(*burden on GC to establish U does not represent majority of Ees at time of recognition*; however, *GC need not prove with mathematical certainty that U lacked majority support at time of recognition where there is evidence that E unlawfully assisted in U organizational campaign*)

2850-1188 Lawful recognition of incumbent union

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(GC sustained burden of proving that incumbent U was lawfully recognized, where recognition was granted during pre-election conference at Bd's office, incumbent's numerical majority was not challenged, at time of recognition no R ptn had been filed by rival U or any other U seeking Ee representation, and rival U did not move to intervene in R proceeding)

2850-1190 Refusal to refer

International Longshoremen's Association, Local 1414 **JD-357-80**
(unnecessary that GC demonstrate what specific jobs were available at time of discriminatory refusal to refer, inorder to establish violation)

2850-1700 Burden on party seeking to overturn results of election

Gulf Coast Automotive Warehouse Company, Inc. **248 NLRB No. 058**
(ALJ upon remand from Bd and ct found E failed to show that U engaged in pre-election misconduct involving **Savair** rule which would warrant setting aside results of election)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(conclusory allegations are not sufficient to obtain hearing in representation case; losing party bears heavy burden)

2850-2200 Failure to sustain burden justifies adverse inference

2850-2233 Nonproduction of material evidence in one's possession raises adverse inference

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

2850-2233—Cont.

(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

2850-3300 Remains with General Counsel if Employer's explanation is reasonable

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(when E shows legitimate reason for discharge of Ee, burden shifts to GC to prove improper motive moved E to discharge Ee)

2850-4400 Shifts to respondent union or employer to establish affirmative defense

Ashcraft's Market, Inc. **251 NLRB No. 025**
(once objecting petitioner establishes that E has announced new benefits during critical period prior to election, burden shifts to E to establish announcement would have been forthcoming at time even if there was no U campaign)

East Wind Enterprises **250 NLRB No. 101**
(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(ct did not extend rule placing burden upon E to come forward with evidence of legitimate and substantial business justification for its act to alleged violation of Sec. 8(a)(4) of Act, since rule was intended to be limited to Sec. 8(a)(3) violations where discrimination was in issue)

2850-4450 Where employer's actions inherently destructive

Freezer Queen Foods, Inc. **249 NLRB No. 045**

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

2850-5500 Shifts to respondent where prima facie case established

Kraft Foods, Inc. **251 NLRB No. 006**
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Siro Security Service, Inc. **247 NLRB No. 157**
(where GC's evidence amounts to prima facie case of nonmajority status of recognized U)

2850-5550 Nondiscriminatory motive must be affirmatively shown by Employer where General Counsel's evidence permits inference of discrimination

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(wage increase granted during pendency of R ptn to segment of Ee complement held violative where E failed to overcome *strong presumption of (its) illegality*)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(once finding made that Ee was illegally discharged, assertion that E would have been terminated or laid off in any case is in nature of affirmative defense and burden of proof on Respondent)

2850-6600 Employer has burden of establishing good faith belief in misconduct warranting discharge

General Telephone Company of Michigan **251 NLRB No. 099**
(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

2850-6650 General Counsel then has burden of proving misconduct did not occur

General Telephone Company of Michigan **251 NLRB No. 099**
(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

2850-7600 Burden on employer to establish legitimate business reasons for transfer of work

St. Regis Paper Company **247 NLRB No. 105**
(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

2850-9300 To show net backpay

Matlock Truck Body

4200 SUFFICIENCY UPON REVIEW

4233 ALJ DECISION IS RECOMMENDATORY ONLY, NOT CONCLUSIVE ON BOARD

4233-2200 Credibility of witnesses, however, primarily for ALJ

4233-2233 'Demeanor evidence'

Service Garage, Inc. **247 NLRB No. 115**
(ALJ's finding of no U animus on E's part based on his observation of E and Ees during hearing but not while testifying is impermissible reliance on conduct not w/i record)

4267 PRESUMPTIONS AND INFERENCES

4267-2000 Where uncertainty exist as to merits of grievance, issue resolved against party creating uncertainty

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd properly resolved uncertainty in merit of grievance against U which created such uncertainty by unlawful act, through its improper investigation of grievance which made it impossible to determine merits of grievance)

4267-2200 Failure to produce evidence peculiarly within party's knowledge raises adverse inference

Suburban Ford, Inc. **248 NLRB No. 051**
(E's *economic defense* of *business decline* rejected where chose not to introduce into evidence documentation of its annual reports, profits and loss figures etc. or any data for comparative purposes regarding personnel and income levels; failure to introduce such evidence justified inference that it would not support or assist contentions of party who originated them)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(failure to produce records showing routineness of raise given Ees which coincided with U activity)

St. Regis Paper Company **247 NLRB No. 105**
(correct to draw adverse inference from Respondent's failure to submit documentary evidence in support of its contention that *transfer of work was economically motivated*)

Frank Briscoe Incorporated **247 NLRB No. 006**

4267-3300 Failure to produce material witness raises adverse inference

American Petrofina Company of Texas **247 NLRB No. 015**
(Respondent's failure to produce as witnesses supervisors who could best corroborate testimony as to Charging Party's alleged deficiencies raised inference their testimony would not have corroborated that of other Respondent's witness)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(where E did not produce its president as witness over issue of alleged coercive statements attributed to the president, but rather relied solely on testimony of office manager who stated that he did not recall *many specifics* of what E president said, ct declined to say that Bd's finding of violation *on the basis of credited testimony of several GC witnesses* was *inherently unreasonable or self-contradictory;* it is appropriate to infer that testimony of E president would have been adverse to E's position, since only contrary evidence offered by E was minimal and uncertain)

4267-3800 Offering spurious defense

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(E's assertions that its satisfaction with discharged Ee drastically declined over relatively short period of time and that E made no real effort to attempt to change Ee's work practices back to what they had been is strong evidence of untruthfulness of E's stated reasons for Ee's discharge)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

4267-4400 Failure to testify concerning crucial point raises adverse inference

General Teamsters Local 959 (Northland Maintenance) **248 NLRB No. 100**
(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and

4267-4400—Cont.

credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

Albany Steel and Brass Corporation **JD-227-80**
(E's president who notified Ee of discharge)

Gar-Wood Detroit Truck Equipment Company **JD-747-79**
(Charging Party's failure to testify in regard to E's assertion that he voluntary quit rather than was discharged raises inference that he would have affirmed E's position)

4267-7100 Amimus as motive for action

Swift and Company **250 NLRB No. 152**
(supervisor's threat to discharge another Ee along with shifting reasons for discharge and disparate enforcement of rules indicating pretextual reasons for discharge evidence U animus)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(shifting defenses to charge of unlawful discharge during hearing gives rise to inference of unlawful motivation)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

4267-7900 In settlements, GC will meet its burden of proof in regard to allegations in complaint

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(in order for Bd to consider approval of settlement agreement it must assume that GC will carry its burden of proof with respect to allegations of complaint)

4267-8200 Solicitation of grievances raises influence of corrective action

St. Francis Hospital **249 NLRB No. 017**
(at E sponsored grievance meeting with Ees during critical period, E, in response to C, stating that he would *take a look and see what we can do* violated Act because he held out prospect of remedial action)

CTS Keene, Inc. **247 NLRB No. 141**
(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

4267-8800 Miscellaneous

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(adverse inference warranted where E's interrogation of Ee failed w/o explanation to testify as to alleged unlawful interrogation)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding, action was taken w/o regard to Ee's seniority or other contractual provisions)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, from his desired second shift to less desirable day shift held violative where transfer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(concerted refusal to work overtime presumptively protected where there was no bargaining relationship, only inchoate relationship with U which did not provide *structured procedures* for conflict resolution)

P.M.S. West, Inc. **JD-(SF)-47-80**
(small plant doctrine standing alone does not impute knowledge of U activity to E; there must be some direct evidence to support inference)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(U's receipt of a receipt for certified mail sent to E establishes presumption that E received letters)

5600 WITNESSES

5601 GENERALLY

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(GC had no obligation to call as witnesses a newspaper reporter and police officer who were present at picketing by Ees, and no presumption should be made because he failed to do so; neither person was employed by GC or was otherwise shown to be under his control, and E was in as good position to subpoena the two as was GC)

Hedison Manufacturing Company **249 NLRB No. 096**
(Bd held ALJ, while fully warranted in precluding E's official from testifying because he refused to comply with subpoena and to testify, erred in precluding E from calling witnesses other than official; since E's asserted reasons for discharges involved herein must rest upon testimony of witnesses as to relevant events, *best evidence* rule involved in cases relied on by ALJ held not applicable to discharges; accordingly, Bd severed and remanded discharge cases to ALJ for supplemental decision)

5650 CREDIBILITY

5650-0100 Generally

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(where parties waived hearing and submitted case to ALJ for issuance of decision based on record in related proceeding for 10(j) inj and, consequently, ALJ based credibility findings on factors other than demeanor, Bd independently examined case record and found no basis for reversing ALJ's credibility determinations or his findings of fact based thereon)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**
(respondent's motion to expunge portion of ALJ's decision or alternatively to reopen the record and submit supplemental brief, denied because in that portion of ALJ's decision, ALJ's discussion regarding counsel for respondent goes to his credibility, which impacts on credibility of other witnesses in case)

C-F Air Freight, Inc. **247 NLRB No. 060**
(inaccuracy of recall of dates considered not impediment to veracity of any witness; instead, credibility resolutions based on ability of witnesses to recall events, demeanor of each witness, weight of respective evidence provided by witness, established or admitted facts, and inherent probabilities and reasonable inferences)

Dravo Corporation, Chris

5650-0900 Corroboration

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

5650-1500 Uncontradicted testimony

General Teamsters Local 959 (Northland Maintenance) **248 NLRB No. 100**
(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

National Steel Service Center, Inc. **JD-395-80**
(T3trier of fact may find facts contrary to those presented by uncontradicted witness

5650-3700 Failure to credit some testimony does not justify rejection of witness' entire testimony

Flatiron Paving Company d/b/a Flatiron Materials Company8250 NLRB No. 080>I17B. N. Beard Company **248 NLRB No. 016**

C-F Air Freight, Inc. **247 NLRB No. 060**

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(nothing is more common in all kinds of judicial decisions than to believe some and not all of a witness' testimony)

National Steel Service Center, Inc. **JD-395-80**

5650-4300 Failure to testify concerning crucial point may be considered

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(failure of respondent's attorney to ask one of his witnesses to testify concerning important matter reinforced ALJ's finding of lack of credibility of witness)

General Teamsters Local 959 (Northland Maintenance) **248 NLRB No. 100**
(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and

5650-4300—Cont.

credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

5650-4900 Impeachment

5650-4910 For criminal activity

5650-4910-2500 Only for felony or misdemeanor convictions involving deceit or falsification

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**
(in supplemental hearing, testimony of Ee credited, notwithstanding his prior criminal conviction for illegal possesion of drugs, where evidence revealed but single conviction of Ee occurring some 6 years before original hearing herein and concerning type of misconduct which would not necessarily support inference of tendency to testify dishonestly under oath)

5650-4910-5000 Convictions before hearing

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**
(in supplemental hearing, testimony of Ee credited, notwithstanding his prior criminal conviction for illegal possesion of drugs, where evidence revealed but single conviction of Ee occurring some 6 years before original hearing herein and concerning type of misconduct which would not necessarily support inference of tendency to testify dishonestly under oath)

5650-4940 Contradictory statements

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

5650-5500 Miscellaneous grounds for discrediting testimony

General Telephone Company of Michigan **251 NLRB No. 099**
(witness using such terms as *felt that* and *to the effect that* renders uncertain content and import of his remarks)

Thermo King Corporation **247 NLRB No. 048**
(GC's witnesses not credited where their testimony lacked consistency and logic and was undermined by their own statements, principal witness was evasive and reluctant to testify and in some instances his testimony was contrived or fabricated, and review of entire testimonial record and briefs coupled with due regard for logic of probability, demeanor of witnesses, and S Ct's Walton Mfg decision were basis for credibility resolutions herein)

5650-6900 Self-serving nature of testimony affects credibility

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

5650-7500 Testimony of witnesses whose statements are lost or destroyed need not be struck

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**
(Bd did not strike testimony of GC's witness where respondent did not allege bad faith on part of GC and presented no evidence to establish that it was prejudiced by failure to produce alleged statement where such statement has been destroyed or lost in good faith)

5650-7800 Testimony against employer by employee while in employ of employer not likely false

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(Ee who testified adversely to E concerning alleged E ULPs, not credited, even though she was still in E's embloy; while individual's act in testifying against own pecuniary interests tends to support reliability of individual as witness, in present instance witness was friend of charging party and was closely aligned with her in internal U matters; while such factors by themselves do not serve as basis for rejecting witness' testimony they tend to show that she was not disinterested in disposition of charging party's case)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**

Chef's Pantry, Inc. **247 NLRB No. 018**

Retailer's Coupon Redemption Co., Inc. **JD-194-80**

6300 WEIGHT AND SUFFICIENCY

6301 GENERALLY

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**
(U's quiescence--when it heard that E did not agree with U that E and U had reached agreement on terms of contract--found not evidence that U concurred with E, where U members ratified the agreement that U claimed had been reached and so notified E, and E acted in accordance with contractual terms that U claimed they had reached agreement on)

Carbonex Coal Company **248 NLRB No. 107**
(ALJ's refusal to accept into evidence summaries of E's economic condition at time it instituted layoffs, since that information was not available to E at time it made its decision, reversed by Bd because this factor goes to weight to be accorded evidence not its admissibility)

7000 SPECIFIC KINDS OF EVIDENCE

7006 ADMISSIONS

7006-3700 By affidavit

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

Wolverine World Wide, Inc. **JD-185-80**
(pretrial statements adduced to impeach witnesses may be used as affirmative evidence, especially where statements contain admissions or declarations against interest)

7012 AFFIDAVITS

7012-2500 Of witnesses who did not testify

Central Freight Lines, Inc. **250 NLRB No. 063**
(affidavit of witness who died prior to hearing, admissable to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

7015 BUSINESS RECORDS

Carbonex Coal Company **248 NLRB No. 107**
(ALJ's refusal to accept into evidence summaries of E's economic condition at time it instituted layoffs, since that information was not available to E at time it made its decision, reversed by Bd because this factor goes to weight to be accorded evidence not its admissibility)

7018 CIRCUMSTANTIAL EVIDENCE

7018-3300 Direct evidence of purpose to violate statute seldom obtainable

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(direct evidence of discriminatory motivation is not necessary to support finding of discrimination and such intent may be inferred from record as a whole)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(state of mind of E officials who make decision to discharge Ee reflects motive for discharge; GC will rarely be able to produce direct evidence of official's state of mind and therefore GC can only produce circumstantial evidence from which Bd can infer finding of improper motive)

7024 EVIDENCE RELATING TO PARTICULAR EVENTS OR FACTS

7024-3300 Events occurring before ULP alleged in complaint may be given weight

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

7024-3375 Settlement agreements not admissible

East Wind Enterprises **250 NLRB No. 101**
(letter from E's counsel to GC written during course of settlement negotiations and was part thereof, inadmissable; See, *Federal Rules of Evidence, Rule 408*)

7024-3900 Events occurring prior to filing of petition

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(although E's speech to Ees emphasizing strikes, plant closing, and loss of jobs resulting from unionization was made prior to filing of operative ptn and cannot serve as basis for setting aside election, it was considered insofar as it provided background in evaluating E's post-ptn conduct)

7024-4200 Offers of settlement or compromise

East Wind Enterprises **250 NLRB No. 101**
(letter from E's counsel to GC written during course of settlement negotiations and was part thereof, inadmissable; See, *Federal Rules of Evidence, Rule 408*)

7024-6700 Facts established at hearing in other Board cases

7024-6717 Admission and decision based thereon not conclusive

Marriott Corporation **251 NLRB No. 180**
(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

7024-8500 Majority status of union

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(in 8(b)(7)(A) proceeding, U's evidence tending to show that incumbent U's majority may have been tainted and not uncoerced held insufficient to rebut conclusion that incumbent had been lawfully recognized; U's evidence of sporadic substitution for supervisors by Ees participating in U activities, supervisor's election to U office, apparent acceleration of dues checkoff, and brief nature of, and rapidly concluded, negotiations had little probative value in support of U's contentions)

7024-8800 Objective evidence of card majority

Tartan Marine Company **247 NLRB No. 073**
(lost card not counted since w/o card it cannot be determined if individual authorized U to represent him on any of the critical dates litigated)

7024-8900 Subjective motivation in signing card

Carlina Knitting Co., Inc., et al. **JD-321-80**
(subjective testimony adduced at hearing held unreliable and does not prove that Ees, when they signed card, did not want U, or that they were tricked into signing cards)

7042 HEARSAY

7042-0100 Generally

7042-0120 What constitutes hearsay

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(testimony of E that detective told him that discriminatee had been accused of harassing a pregnant woman held not hearsay, where it was not being offered for truth of matter being asserted by detective but rather was offered to show basis for E's fear of discharging discriminatee before E's departure overseas, as result of which his pregnant wife would be left alone)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(although testimony of general contractor and party in interest herein regarding his own statements made to various subcontractors in course of his attempts to get them to schedule work at jobsite was not hearsay, Bd held general contractor's testimony regarding responses made by the subcontractors was self-serving hearsay)

7042-0160 Hearsay may be excluded

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(testimony of witness, who was nonstriking Ee, concerning what his children reported to him regarding phone call they had received allegedly made by striking Ee who threatened witness' family excluded as hearsay and held not w/i exception to hearsay rule, since it did not have equivalent circumstantial guarantee of trustworthiness necesary for admission)

7042-0180 Hearsay may be given weight

7042-0180-2500 Where admitted without objection

Avon Mirror

7042-0180-5000 Where corroborated

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(testimony of general contractor and party-in-interest herein regarding responses made by various subcontractors in course of his attempts to get them to schedule work at jobsite, held self-serving hearsay not to be given significant weight, since testimony was not corroborated, either by testimony from subcontractors involved in conversations or by any documentary evidence)

7042-0190 Exceptions to the hearsay rule

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(contention that conversation between E and International U was inadmissible because International was not party to proceeding, rejected, where testimony of conversation was admissible since it went to E's state of mind in reaching decision to terminate Ee)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(testimony of witness, who was nonstriking Ee, concerning what his children reported to him regarding phone call they had received allegedly made by striking Ee who threatened witness' family excluded as hearsay and held not w/i exception to hearsay rule, since it did not have equivalent circumstantial guarantee of trustworthiness necesary for admission)

7042-2500 Admission against interest not within hearsay rule

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

7042-7500 Testimony as to witness' own conversations not hearsay

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(although testimony of general contractor and party in interest herein regarding his own statements made to various subcontractors in course of his attempts to get them to schedule work at jobsite was not hearsay, Bd held general contractor's testimony regarding responses made by the subcontractors was self-serving hearsay)

7042-8700 Statements of deceased persons or persons too ill to testify

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(*ex parte* affidavits of deceased declarant admissible under Federal Rules of Evidence 804(b)(5) hearsay exception where statement corroborated by testimony since ct has discretion to admit such affidavits where necessity for receipt is shown and affidavit consistent with circumstantial evidence)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(*ex parte* affidavits of deceased declarant admissible under Federal Rules of Evidence 804(b)(5) hearsay exception where statement corroborated by testimony since ct has discretion to admit such affidavits where necessity for receipt is shown and affidavit consistent with circumstantial evidence)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(*ex parte* affidavit of deceased declarant admissible, notwithstanding Respondent's contention it was not advised of particulars of affidavit as required by Federal Rules of Evidence 804(b)(5) since GC met requirement by having advised Respondent in writing that it intended to use affidavit to support allegations of complaint including unlawful suspension of declarant)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B

7051 IMMATERIAL OR IRRELEVANT EVIDENCE

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**
(dispute between GC and U as to whether exclusion of certain individuals at certain locations from coverage by contract in question constituted disclaimer of interest by U in representing those individuals found irrelevant to proceeding concerning dispute as to whether U and E had reached agreement on terms of contract from whose coverage said individuals were excluded)

7054 OFFER OF PROOF

Healdsburg General Hospital **247 NLRB No. 030**
(E's offer of proof did not meet its *heavy burden* of showing *direct* conflict of interest disqualifying nurses association from acting as Ee representative on ground association is subject to control by supervisor-members; there was no evidence that any member of association's board of directors could influence board to advance competitive position of any E as against E, and there was no proof of possible financial conflict of interest between association and E or that presence of supervisory nurses of other Es in positions of authority conflict with E's interests)

7060 OPINION EVIDENCE (NONEXPERT) MAY BE GIVEN WEIGHT

Service Garage, Inc. **247 NLRB No. 115**
(witnesses may not testify to matters outside their personal knowledge nor give opinions unless based on their own perception so that ALJ's reliance on Ee-witness's lack of testimony that he had been laid off for U activity is improper)

7078 STIPULATIONS

7078-5000 Effect of stipulation on stipulating parties

The Salvation Army of Massachusetts Dorchester Day Care Center **247 NLRB No. 062**

(Bd held stipulation specifying that E is engaged in commerce w/i meaning of Act did not foreclose inquiry by Bd to determine whether assertion of jurisdiction would be contrary to Bd's jurisdictional policy)

7084 STATEMENTS OF WITNESSES TO COUNSEL OR BOARD AGENT IN PREPARATION OF TRIAL

7084-0100 Generally

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

7084-7000 Rules & Regulations 102.118

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

(Bd agent writing something while witness spoke and nothing more did not qualify as statement w/i R/R 102.118(d))

7096 TAPE RECORDINGS

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

(exclusion of surreptitiously recorded tapes offered in evidence in instant case, held proper, since the tapes were concerned with collective bargaining and thus fall squarely w/i rule established by Bd in *Carpenter Sprinkler Corporation*, 238 NLRB No. 139)

Levi Strauss

8400 ADMISSIBILITY

8401 GENERALLY

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(E's exhibits containing written and video-tape instructions prepared by E's counsel and given to supervisors concerning their obligations under labor law held admissible and copies thereof should be provided to GC and U; although exhibits deal essentially with compliance matters, they are useful in providing a full record)

8401-1600 Effect of form and order of evidence offered

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

8401-2500 Authentication of documents

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**

(where authorship of document in dispute, there was inadequate foundation for their admissibility)

8401-5000 References to state court proceeding

Local 157, Plumbers (Local 204, Laborers) **248 NLRB No. 032**

(E's mtn to strike from U's brief all references to state ct proceeding, denied, since the fact that such references concern state ct proceeding involving different legal issues goes to their weight and not their admissibility)

8401-6600 Parole evidence

Schorr Stern Food Corp. **248 NLRB No. 050**

(in backpay proceeding E held precluded from presenting evidence regarding modification of contract, since such evidence would be immaterial and Bd had adjudicated issue in question in ULP proceeding herein)

8401-8400 Affidavit of decedent

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

(*ex parte* affidavit of deceased declarant admissible, notwithstanding Respondent's contention it was not advised of particulars of affidavit as required by Federal Rules of Evidence 804(b)(5) since GC met requirement by having advised Respondent in writing that it intended to use affidavit to support allegations of complaint including unlawful suspension of declarant)

Central Freight Lines, Inc. **250 NLRB No. 063**

(affidavit of witness who died prior to hearing, admissable to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

8433 EXCLUSION OF EVIDENCE

8433-0100 Generally

8433-0150 Prejudicial exclusions only significant

8433-0150-5000 No prejudice where excluded evidence is immaterial

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**

(ALJ did not err in refusing to admit exhibits of documents which E contended contained false or maliciously false statements against it and were distributed in violation of its rule prohibiting distribution of such material, since falsity or malicious falsity of documents irrelevant where rule which E attempted to enforce overbroad since it prohibited distribution of merely false documents)

8433-3300 Subjects improperly excluded

8433-3333 8(a)(1) or (2)

8433-3333-5900 Evidence in 8(b)(7)(A) proceeding designed to establish employer's unlawful assistance and/or domination of incumbent union

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

(evidence relating to E's assistance to, and/or domination of incumbent U not precluded, where such evidence is not designed to establish existence of 8(a)(2) violation but, rather, is proffered as defense against assertion that incumbent U was lawfully recognized; it is inequitable to conclude U is precluded from litigating a legal defense, and U's evidence is directly addressed to words of Act placing burden on GC to prove 8(b)(7)(A) violation by showing *lawful recognition* was granted to incumbent U)

8433-6700 Subjects properly excluded

8433-6712 8(a)(3)

8433-6712-5000 That employer had made unconditional offer of reinstatement

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**

(ALJ's ruling to exclude evidence of E's alleged unconditional offer of reinstatement, appropriate since issue of alleged offer of reinstatement is matter best raised during compliance stage of the proceeding)

8433-6724 Hearsay

First Termite Control Co., Inc. **247 NLRB No. 106**

(freight bills made out by railroad and in custody of E held to have indicia of trustworthiness required by Federal Rules of Evidence for admission of hearsay evidence and therefor not excluded for purposes of showing E met legal jurisdictional standard)

8433-6724-5000 Exception because of *circumstantial guarantees of trustworthiness* under Federal Rule of Evidence 804

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**

(no exception)

8433-6727 Subjective evidence concerning prior state of mind

Flagler Memorial Park **247 NLRB No. 204**

(hypothetical testimony relating to effect of previously unknown U constitutional provisions on minds of voters relating to their actions 3 years before, rejected as wholly unreliable)

8433-6764 Subject matter beyond scope of hearing

C.J.B. Industries **250 NLRB No. 184**

(contention that evidence of unlawful motive in hiring should not have been considered with respect to 8(a)(5) claim because no allegation or finding that E violated 8(a)(3) was made held w/o merit, since claim was based upon alleged successorship obligation, and element of continuity or work force between predecessor and successor is critical; GC must show either that E hired or retained requisite complement of former Ees *or* that it decided not to hire former Ees because of their U affiliation)

8433-6775 Testimony of or concerning government conciliators

N.L.R.B. v. Joseph Macaluso, Inc., d/b/a Lemon Tree **618 F.2d 51 (C.A. 9, 1980)**

(subpoena of Federal Mediation and Conciliation Service mediator properly revoked where E sought mediator's testimony regarding bargaining sessions since *public interest in maintaining perceived and actual impartiality of Federal Mediators does outweigh benefits derivable from testimony*)

8467 EVIDENCE RELATING TO EVENTS BARRED BY 6-MONTH LIMITATION

8467-3300 Admissible for background purposes

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**

(U's failure to refer alleged discriminatees outside 10(b) period admissible as evidence of animosity and as background to support finding of unlawful refusal to refer w/i 10(b) period)

750 RES JUDICATA

0100 GENERALLY

Charmer Industries, Inc. **250 NLRB No. 031**
(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

Schorr Stern Food Corp. **248 NLRB No. 050**
(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

2500 FORMS OF APPLICATION

2533 COLLATERAL ESTOPPEL - SUBSEQUENT PROCEEDING BASED ON DIFFERENT CAUSE OF ACTION

Wonder Markets, Inc. **249 NLRB No. 042**
(although discriminatee was involved in an incident that justified discharge of another Ee in previous cause of action, Bd rejected theories of *res judicata* and collateral estoppel as bars to relitigating reinstatement issue in the instant backpay proceeding where discriminatee was not party to previous ULP hearing and instant case involved different issue which Ee is entitled to litigate as matter of due process)

2550 COLLATERAL ESTOPPEL SUBSEQUENT PROCEEDING BASED ON SAME CAUSE OF ACTION

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

5000 EFFECTS OF APPLICATION

5032 NOT OPERATIVE WHERE PARTIES ARE DIFFERENT

Wonder Markets, Inc. **249 NLRB No. 042**
(although discriminatee was involved in an incident that justified discharge of another Ee in previous cause of action, Bd rejected theories of *res judicata* and collateral estoppel as bars to relitigating reinstatement issue in the instant backpay proceeding where discriminatee was not party to previous ULP hearing and instant case involved different issue which Ee is entitled to litigate as matter of due process)

7500 FINDINGS OF OTHER TRIBUNALS BASED ON SAME EVIDENCE NOT BINDING ON BOARD

762 LACHES

0100 GENERALLY

2000 ELEMENTS OF LACHES

4000 POSSIBLE EXCUSES FOR DELAY

6000 COMPLAINANT NORMALLY WOULD BE BARRED IF APPLICABLE STATUTE OF LIMITATIONS IN ANALOGOUS SITUATIONS HAS RUN

8000 NOT AVAILABLE AGAINST BOARD

775 WAIVER

1200 MAY BE VERBAL OR IN WRITING

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**

(U by signing strike amnesty agreement effectively waived right to discipline Ees for crossing picket line where agreement prohibited reprisals against Ees who worked for E during strike)

2500 MAY RESULT FROM IMPLICATION OR USAGE

3700 ASSENT MUST BE CLEAR, IT WILL NOT BE INFERRED FROM DOUBTFUL LANGUAGE OR FACTS

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

5000 WAIVER OF PROCEDURAL PROVISIONS

6200 APPLICABILITY TO BOARD

7500 ELECTION OF REMEDIES (ANALOGOUS TO WAIVER)

8700 WAIVER OF PROTECTED RIGHTS

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**

(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

8718 RIGHT TO REINSTATEMENT AND/OR BACKPAY

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**

(dischargees' statement at hearing that they did not wish to return to work for E held not to constitute waiver of right to reinstatement, since questions which led to responses were not valid offers of reinstatement, and E had not otherwise offered them reinstatement)

Newspaper Printing Corporation **JD-203-80**

(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

8725 RIGHT TO STRIKE AGAINST ULP MAY BE WAIVED BY EXPLICIT CONTRACTUAL PROVISION

Andersen Sand

8731 RIGHT TO BARGAIN OVER MANDATORY SUBJECTS

Dial Tuxedos, Inc. **250 NLRB No. 064**

(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

8750 FAILURE TO OBJECT TO ELECTION NOT WAIVER OF PREELECTION ULP'S

Connecticut Foundry Company **247 NLRB No. 145**

(E who signed agreement in which U agreed that *We will not restrain or coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* (not conventional request to proceed) waived its rights to have election set aside due to ULP's which were part or could have been part of settlement agreement it entered into with U, thereby enabling election to take place before end of posting period, effectively waived its right to protest U's ULP's committed prior to execution of agreement)

8775 CONTRACT WAIVER OF RIGHTS TO BARGAIN CONCERNING MATTERS NOT COVERED

Henry Vogt Machine Company **251 NLRB No. 040**

(Bd found U's failure to bring up issue of cafeteria privilege for laboratory Ees during bargaining not tantamount to a waiver where there was no *clear and unequivocal* evidence of U's *conscious relinquishment* of right to bargain and no clear and unequivocal notice by E that privileges would be withdrawn)

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**

(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment,* requires *conscious relinquishment* by U)

Southwestern Bell Telephone Company **247 NLRB No. 027**

(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

8787 RIGHT TO ASSISTANCE OF UNION REPRESENTATIVE AT INVESTIGATORY INTERVIEW

General Motors Corporation **251 NLRB No. 121**

(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**

(*Weingarten* rights not waived where U agreed that probationary Ee could be discharged at sole discretion of E since probationary Ees have all rights of Ees under Act)

787 ESTOPPEL

2000 ELEMENTS OF ESTOPPEL

2033 INTENTIONALLY CAUSING PARTY TO BELIEVE FACTS TO BE OTHER THAN WHAT THEY REALLY ARE

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where U did not lack information or means of obtaining information as to status of E's membership in multi-E association but took no action to clarify ambiguity as to such status)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where U did not lack information or means of obtaining information as to status of E's membership in multi-E association but took no action to clarify ambiguity as to such status)

2067 KNOWING OF SUCH BELIEF AND OF POSSIBLE CHANGE IN POSITION IN RELIANCE THEREON, REASONABLE STEPS TO NOTIFY PARTY OF TRUE STATE OF FACTS WERE NOT TAKEN

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where no detrimental reliance by U on E's conduct suggesting membership in multi-E association)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where no detrimental reliance by U on E's conduct suggesting membership in multi-E association)

4000 TYPES OF ESTOPPEL

4025 ESTOPPEL BY SILENCE

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(respondent held estopped, on remand from court to determine purpose and effect of specific U conduct, to assert that local U had no authority to act for certified representative at such late date in proceedings)

4037 EQUITABLE ESTOPPEL

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where U did not lack information or means to obtain information as to E's membership status in multi-E association, and there was detrimental reliance by U on E conduct suggesting membership)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where U did not lack information or means to obtain information as to E's membership status in multi-E association, and those was detrimental reliance by U on E conduct suggesting membership)

6000 ESTOPPEL OF BOARD

6001 GENERALLY

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(while agency is free to change its policies as it determines are in public interest, it must supply reasoned analysis indicating why its departure from precedent)

8000 ESTOPPEL OF PARTIES

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**
(estoppel against E's repudiating new multi-E bargaining agreement, created, where E did not notify U of intent not to renew bargaining obligation under expired contract but rather, for 15 months after effective date of new agreement, availed itself of benefits of U hiring hall for referral of Ees, and implemented terms of the new contract, including paying contract wage scale, making deductions, and remitting payments, to various trust funds)

800 COURT PROCEEDINGS

817 PROCEEDINGS FOR ENFORCEMENT OR REVIEW OF BOARD DECISIONS AND ORDERS

0100 GENERALLY

0500 JURISDICTION

0501 GENERALLY

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**
(district ct w/o jurisdiction to hear E's due process claims against Bd discovery rules; proper forum for review is ct of appeals)

0550 ORDER REVIEWED MUST BE 'FINAL ORDER' UNDER SECTION 10(c)

0550-3300 Not final orders

Linda Willenbrink, et al. v. N.L.R.B. **612 F.2d 1088 (C.A. 8)**
(Bd determinations under sec. 9 in certification proceeding are not directly reviewable under sec. 10(f) as final orders of Bd and orders concerning representation matters are only reviewable when representation proceedings are drawn into question by ptn for enforcement or review of Bd order made under sec. 10(c) to restrain ULP)

0575 STANDING AS 'PERSON AGGRIEVED' UNDER SECTION 10(f)

0575-0100 Generally

Linda Willenbrink, et al. v. N.L.R.B. **612 F.2d 1088 (C.A. 8)**
(ptn for review dismissed since ct lacked jurisdiction to review matter where ct had remanded case to Bd and cannot regain it until proper appeal is perfected by person with standing under Sec. 10(f) of Act; petitioners herein have no such standing since harm they urge relates to Bd's reinstatement of strikers allegedly to block decertification proceeding and therefore such charge goes to Bd certification action not related to any pending ULP charge over which ct has jurisdiction so as to be reviewable under 10(f))

Linda Willenbrink, et al. v. N.L.R.B. **612 F.2d 1088 (C.A. 8)**
(Bd determinations under sec. 9 in certification proceeding are not directly reviewable under sec. 10(f) as final orders of Bd and orders concerning representation matters are only reviewable when representation proceedings are drawn into question by ptn for enforcement or review of Bd order made under sec. 10(c) to restrain ULP)

0900 VENUE

1400 STAY OF BOARD ORDER

2300 PARTIES

2700 INTERVENTION

3200 PLEADINGS

3600 CONSOLIDATION OF PROCEEDINGS

4100 RECORD

4125 CASE MUST BE HEARD ON RECORD CERTIFIED BY BOARD

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**
(notwithstanding valid objection to election, because of delinquency on part of E to raise objection Bd did not abuse its discretion in refusing to reopen record)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**

4500 BRIEFS AND ORAL ARGUMENT

5000 DEFAULT JUDGMENT

5400 SUMMARY ENFORCEMENT

5467 'EXTRAORDINARY CIRCUMSTANCES' EXCEPTION OF 10(e) APPLICABLE

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(E's failure to raise issue before Bd and ct of appeals as to whether information requested by U regarding E's aptitude testing program would be of any actual or potential relevance to performance of U's statutory duties held foreclosed from consideration herein by Sec. 10(e); E's contention that it had *no practical reason* to object was not an *extraordinary circumstance* excusing E's neglect to press an exception before Bd)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(E failed to comply with Sec. 10(e) and waived his right to raise issue before ct regarding contradictory evidence that Bd allegedly erroneously refused to consider, where E's statement of position on remand was ambiguous and caused Bd to interpret it as requesting resolution of charge w/o resolution of contradictory evidence, and E's counsel stated to ct that extraordinary circumstances did not exist)

5900 SCOPE OF JUDICIAL REVIEW

5901 GENERALLY

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**
(reviewing ct may not displace Bd's choice between two fairly conflicting views, even though ct would justifiably have made a different choice had the matter been before it de novo, and such standard is not modified when Bd and its ALJ disagree)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd has broad latitude in ascertaining appropriate remedial measures, and its decision must be given *special respect*; ct will not disturb Bd's order unless it is patent attempt to achieve ends other than those which effectuate policies of Act)

Midwest Stock Exchange, Inc.; et al. v. N.L.R.B. **620 F.2d 629 (C.A. 7, 1980)**
(cts of appeals bear responsibility of reviewing Bd's specific application of its rules initially promulgated under its *wide discretion*, establishing procedures and safeguards for conducting R elections; where Bd has promulgated standards governing conduct of election, those standards are controlling until Bd announces a change and its reason for it, and Bd's application of its standards must be reasonably consistent with its previous decision)

5901-6700 Enforcement mandatory where Board has acted properly

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(reviewing ct must not substitute its judgment for that of agency but must decide only whether agency made reasonable finding, not whether it made correct finding; difference between two depends on how strongly reviewing ct disagrees with finding)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where

5901-6700—Cont.

substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(enforcement denied where ct felt that Bd majority findings on ultimate factual question were not supported by substantial evidence on record considered a whole; 8(a)(4) charge in issue)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(Bd's finding that land title companies were neutrals with respect to U's dispute with title insurance company, whose policies of title insurance they sold, and accounted for 95% of revenues of land title companies, affirmed where findings of neutrality were based on substantial evidence)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(enforcement denied since ct was able to determine that lessees in instant case were independent contractors; nor would enforcement have been granted w/o first having received from Bd intelligible rationale for distinctions it drew between Ees and independent contractors)

5907 FINDINGS OF FACT

5907-2000 REVIEWABLE AS TO WHETHER SUPPORTED BY 'SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE'

Peter Frattarcli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**
(Bd's opn failed to refute ALJ's factual findings on remand and is thus not supported by substantial evidence; its efforts to undercut these findings in its brief to ct do not meet its official obligation)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(drawing line between prediction and implied threat is often one of great difficulty, and possibility that statement contains implied threat must be viewed from Ees' point of view; for that reason Bd expertise is particularly relevant to determination of whether latent threat lies hidden in E's words, while ct's scope of review is limited to inquiry whether Bd's determination is reasonable and supported by substantial evidence)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(in assessing E's activity alleged to constitute unlawful restraint or coercion, relevant inquiry is not limited to examining ostensible meaning or likely impact on Ees of E's statement; scope of inquiry must encompass entire pattern of E conduct)

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

Congress of Independent Unions and Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 172 (C.A. 8, 1980)**
(ct's obligation was to review record in entirety, for substantiality of evidence must take into account whatever in record fairly detracts from its weight; thus, history of dispute and language of picket signs and letters sent by respondent U to picketed E must be considered together in order to determine whether U's picketing exhibited recognitional objective)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**
(on reviewing entire record, ct concluded that there was substantial evidence in record to support Bd's finding that each Ee resigned from U before crossing picket line in violation of U constitution and thus, no longer bound by U conditions)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(in determining whether substantial evidence on the record as a whole supports conclusion that legitimate business reason was motivating factor, i.e., the *but-for* cause of discharge, ct must not limit its consideration to supporting evidence while excluding contradictory evidence)

5907-2001 Generally

Tri-State Truck Service, Inc. v. N.L.R.B. **615 F.2d 65 (C.A. 3, 1980)**
(Bd's finding that two Ees were unlawfully discharged for engaging in protected concerted activity reversed in absence of substantial evidence on record as whole that E knew of such concerted activity from telephone conversation with individual Ee who only asked about time and one-half for working on Saturday with no indication that subsequent decision of refusing to work was made on other than an individual basis; furthermore, E's knowledge that two discharged Ees lived together does not infer knowledge of concerted activity)

Tri-State Truck Service, Inc. v. N.L.R.B. **615 F.2d 65 (C.A. 3, 1980)**
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United States Postal Service v. N.L.R.B. **614 F.2d 384 (C.A. 4) (1980)**
(where factual and legal theory of pretext discharge relied upon by Bd in ct to support finding of violation was completely different from factual and legal theory of *Weingarten* violation upon which evidentiary hearing was conducted before ALJ and case decided by Bd, ct held substantial evidence test was not met)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(in reviewing reasonableness of Bd's findings under substantial evidence test, ct must review reasonableness of conclusion Bd drew from record and must determine how reasonable person might view record)

N.L.R.B. v. Best Products Company, Inc. **618 F.2d 70 (C.A. 9, 1980)**
(notwithstanding Bd's finding that Ee's suspension was unlawfully motivated by Ee's U activity and not her excessive absenteeism, ct denied enforcement where Bd's finding was supported not by substantial evidence but circumstantial inferences of pretextual motivation and U animus)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(enforcement denied where ct felt that Bd majority findings on ultimate factual question were not supported by substantial evidence on record considered a whole; 8(a)(4) charge in issue)

5907-4000 Court determines sufficiency of evidence supporting admitted or uncontested findings

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1979)**

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1980)**

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1980)**

5907-8000 Court may not encroach upon fact-finding prerogatives of Board

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(ct's scope of review as to factual findings is narrow and it may only reverse if Bd's finding is not supported by substantial evidence; it is for Bd to draw inferences and assess credibility, and ct may not substitute its assessment of evidence for Bd's if there are conflicting versions in record)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. **599 F.2d 1057 (C.A. 9, 1979)**
(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

5907-8500 Weight given ALJ findings

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(Bd's finding that discharge of Ee violative not supported by substantial evidence where his driving record resulted in problem in insuring him; further, ALJ's finding that there was insufficient evidence of discriminatory motive entitled to weight)

5907-8500—Cont.

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ALJ's decision given special weight when contrary to Bd's especially when credibility involved)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

5911 CREDIBILITY RESOLUTIONS

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(credibility resolutions preculiarly province of Bd)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ALJ's decision given special weight when contrary to Bd's especially when credibility involved)

5914 CONCLUSIONS OF LAW

5914-2500 Weight given ALJ conclusions

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

5914-5000 Experienced judgment of Board entitled to great weight

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(agency's conclusions based upon inferences it draws not to be set aside by reviewing ct unless they transgress bounds of reason)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(ct accords special deference to Bd's expertise in determining supervisory status under substantial evidence test because gradations of authority w/i organization can be so subtle)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(in Bd's interpretation of mandatory bargaining provisions)

N.L.R.B. v. Richard Tischler, Martin Rader and Donald Connelly, Sr., a limited partnership, d/b/a Devon Gables Nursing Home, et al. **615 F.2d 509 (C.A. 9) (1980)**
(deference accorded to Bd's conclusions rather than to ALJ's where Bd did not disagree with ALJ's assessment of credibility of witnesses, but rather drew different inferences from statements made by witnesses upon whom ALJ relied)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

5914-7500 Consideration may be given to fact Board and ALJ reached different results

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(judicial deference to Bd's legal conclusion as to relevance of information sought was not lessened as result of contrary legal inference drawn by ALJ)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(judicial deference to Bd's legal conclusion as to relevance of information sought was not lessened as result of contrary legal inference drawn by ALJ)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(judicial deference to Bd's legal conclusion as to relevance of information sought was not lessened as result of contrary legal inference drawn by ALJ)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ALJ's decision given special weight when contrary to Bd's especially when credibility involved)

5928 DISCRETION IN EXERCISE OF JURISDICTION

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 1980)**
(enforcement denied where Bd committed error in declining to defer to arbitration award as clearly repugnant to Act where arbitrator had determined that E had discharged Ee for just cause; Ee's conduct arguably unprotected and where arbitration award arguably characterizable as not inconsistent with Bd policy, Bd must defer to arbitrator's decision)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 1980)**
(in reviewing Bd's refusal to defer to arbitration award as clearly repugnant to Act, ct applied abuse of discretion standard based on substantial evidence of record to support reasonableness of Bd's actions, as opposed to reviewing Bd's decision under an error of law standard)

5935 UNIT DETERMINATIONS

N.L.R.B. v. Continental Corporation of Michigan, Inc. d/b/a Holiday Inn West **612 F.2d 257 (C.A. 6)**
(Bd has very broad discretion in determining bargaining units; See *Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485 (1947))

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(Bd's unit determinations will not be overturned by ct unless they are arbitrary and unreasonable, and ct may not substitute its own judgment for rationally supported position adopted by Bd which has discretion to choose an appropriate unit and select among several appropriate ones)

5935-5000 Supervisory status of employee

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

5935-7500 Independent contractor status

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

5942 CONDUCT OF ELECTIONS AND CERTIFICATION OF UNIONS

5942-8000 Rulings on objections

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(ct will reverse Bd's decision in regard to alleged interference with election only where Bd has abused discretion)

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**
(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with no quasi about it, concerning which cts should not interfere save for the most glaring discrimination or abuse* however, if party demonstrates by prima facie evidence existence of *substantial and material factual issues which if resolved in its favor, would require setting aside election* hearing is required)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

N.L.R.B. v. Ohio Masonic Home **620 F.2d 138 (C.A. 6, 1980)**
order enforced and election upheld where E did not sustain burden of establishing that Bd acted arbitrarily, capriciously, and abused its discretion in overruling objections and ordering certification)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file consti-

5942-8000—Cont.

tutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(contention by E, in objecting to election, that U had created racially inflamatory atmosphere precluding fair election, rejected, where E failed to *supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election*)

5944 DETERMINATIONS AS TO EFFECTS OF ULPS ON REPRESENTATION ELECTIONS

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(although it would be difficult to make sufficient showing to have election set aside where U won election by wide margin, ct must consider possibility that objectionable conduct itself contributed to margin of victory)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(enforcement denied where Bd improperly granted summary judgment in ULP case despite E's showings of atmosphere of fear and coercion that would tend to interfere with election and possible *Savair* violations; hearing was required on E's objections)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(determination of whether bargaining order warranted is task, not for reviewing cts, but for Bd based on its expert estimate as to effects on election of the ULPs)

5949 JURISDICTIONAL DISPUTE DETERMINATIONS

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(Bd's finding that land title companies were neutrals with respect to U's dispute with title insurance company, whose policies of title insurance they sold, and accounted for 95% of revenues of land title companies, affirmed where findings of neutrality were based on substantial evidence)

5953 SECONDARY BOYCOTT DETERMINATIONS

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(Bd erred as matter of law by ignoring traditional work patterns when defining work in contraversy; being work of loading and unloading ocean-borne cargo)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(ct's understanding of legality of work preservation agreements controlled by *National Woodwork Manufacturers Association v. NLRB*, 386 U.S. 612 (1967) and *NLRB v. Enterprise Association of Steam, etc. Pipefitters, 429 U.S. 507 (1977)*)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

5956 REMEDIAL ORDER PROVISIONS

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(although Bd has broad discretion in devising remedial orders, and relationship of remedy to policy is peculiarly a matter for administrative competence, Bd's choice of remedy does not constitute a blank check for arbitrary action; ct's role in reviewing ptns for enforcement under 10(e) is not that of a passive conduit)

J. P. Stevens

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd's actions to remedy U's failure to represent Ee enforced; Bd set aside collective bargaining agreement, decertified U, and ordered U to make Ee whole for differential between journeyman's scale and his actual wages for entire time of his employment with E)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd ordered proper remedy in revoking U certification where U did not fairly represent all those in bargaining unit)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd's remedies of ordering E and multi-E association to cease and desist to recognize or deal with supervisor as U official and ordering E not to permit supervisor to serve as U official held proper)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(bargaining orders are always remedial and are designed to set matters as they would have been in absence of E's misconduct)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(ct has held that because of unusual nature of *Gissel* bargaining order Bd should look to events subsequent to ULP in order to determine appropriateness of (bargaining) order)

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

5970 INTERPRETATION OF STATUTES

5970-5000 NLRA

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**
(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recog-

5970-5000—Cont.

nized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

5984 DISCRETIONARY ADMINISTRATIVE POLICIES

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(*Sec. 9(c)(1)(A) substantial interest requirement* is not jurisdictional prerequisite to Bd action; rather it is *administrative expedient only*, adopted to enable Bd to determine for itself whether or not further proceedings and warranted)

5991 CONTRACT CONSTRUCTION

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. **613 F.2d 1102 (C.A.D.C.) (1980)**
(unless Bd's construction of contract which differs from that of arbitrator is arbitrary or capricious Bd's interpretation is entitled to great weight)

6300 ADDUCTION OF ADDITIONAL EVIDENCE

6375 EVIDENCE WHICH MAY NOT BE ADDUCED

6375-5000 Events subsequent to Board order

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(Bd, not ct, must receive new evidence if it is proper for it to be received)

6800 CONTENTIONS NOT RAISED BEFORE BOARD

6817 ISSUES NOT RAISED BEFORE BOARD WILL NOT BE CONSIDERED BY COURT

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

6833 OBJECTIONS NOT URGED BEFORE BOARD MAY NOT BE CONSIDERED

6833-2800 Failure to except to proposed findings and order conclusive

6833-2825 Except where Board enlarges order

N.L.R.B. v. Local 345, Utility Workers of New England **612 F.2d 598 (C.A. 1)**
(where ALJ's *Order* did not include all items in *Remedy* section, no exceptions filed, and Bd adopted *pro forma* ALJ's recommended D/O, Bd has no right to clarify its Order where such modification imposes additional and material burdens on Respondents w/o allowing parties to be heard on propriety of additional relief notwithstanding party filed no exceptions with Bd and Bd has inherent power to modify its orders)

6833-5000 Unless failure to do so excused because of extraordinary circumstances

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(SCt decision in *Yeshiva* inapplicable to instant case and therefore not the *extraordinary development* which might otherwise excuse appellant's failure to raise the managerial employee exception before the Bd)

6833-8400 Objections concerning orders

N.L.R.B. v. Local 345, Utility Workers of New England **612 F.2d 598 (C.A. 1)**
(where ALJ's *Order* did not include all items in *Remedy* section, no exceptions filed, and Bd adopted *pro forma* ALJ's recommended D/O, Bd has no right to clarify its Order where such modification imposes additional and material burdens on Respondents w/o allowing parties to be heard on propriety of additional relief notwithstanding party filed no exceptions with Bd and Bd has inherent power to modify its orders)

7200 JUDGMENT

7283 VACATION OF JUDGMENT

7283-7500 Vacated because of intervening Supreme Court decision

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

7700 REHEARING

8100 REMAND TO BOARD

8101 GENERALLY

8101-3300 Effect of remand

8101-3350 'Law of the case' binding on Board

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**
(on remand for new evidence on issue of whether or not U had in fact operated legitimate exclusive hiring hall service provided for in contract, ct's prior opinion that there was not substantial evidence thereof was law of case, and ct rejected Bd's holding that, given existence of contract providing for exclusive hiring hall, evidence thereof was irrelevant, and system as operated was legitimate)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(absent demonstration of significant modification of situation since prior unpublished memorandum decision involving same parties, such decision remains law of case for purposes of res judicata or collateral estoppel even though under ct's rules unpublished memorandum does not have precedential weight)

8150 PURPOSE OF REMAND

8150-1100 Reconsideration in light of court opinion

Keystone Steel

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(impermissibly broad order remanded to Bd for modification with respect to requirements for U access to plants and inclusion of notice in appropriate company publications)

N.L.R.B. v. Gulf States Canners, Inc. **598 F.2d 896 (C.A. 5)**
(remand to apply appropriate standard in assessing whether action justifies setting aside election)

8150-1700 Reconsideration in light of changed circumstances

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(remand to Bd to consider additional evidence pertaining to necessity of bargaining order where ct reversed Bd on one ULP finding, as this is independent ground for review and differs from situation where ct upholds Bd order in toto)

8150-3300 Reconsideration in light of subsequent Board decision

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(where RD made decision on objections to elections using *Hollywood Ceramics* standard and Bd later adopted less stringent *Shopping Kart* standard before returning to former standard and Bd's adoption of RD's decision occurred under latter standard, *Shopping Kart*; no denial of due process where Bd merely adopted report as written as it is not assumed that Bd considered objection under standard other than that used by RD)

8150-7700 Additional findings

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. **613 F.2d 1102 (C.A.D.C.) (1980)**
(remand for further analysis of collective bargaining agreement and arbitrator's interpretation of it where arbitrator decided E had not complied with agreement with regard to contracting out but ALJ and Bd decided contracting out proper since E complied with bare notice and bargaining requirements of *Fibreboard* since not clear to what extent ALJ and Bd considered contract and arbitrator's interpretation of it in view of strong policy favoring deference to arbitrator's interpretation of bargaining agreement)

8150-7710 Objections to election

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

8150-7725 Determination of majority status

N.L.R.B. v. Scott Printing Corporation and J

8150-7740 Backpay determination

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**

(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

8150-7750 Motivation for respondent's action

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

(remand to determine E's motivation for discharges where Bd had failed to adequately assess validity of rule prohibiting distribution of wage data pursuant to which Ees discharged; Bd would be required to determine whether application of rule impermissibly burdened protected activity, or whether E was not compelled to allow distribution of wage data on its property because other means available to disseminate material; anti U motivation irrelevant if rule itself invalid)

8150-7755 For consideration of appropriate relief

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**

8150-7777 Explain basis for decision

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

(remand to determine E's motivation for discharges where Bd had failed to adequately assess validity of rule prohibiting distribution of wage data pursuant to which Ees discharged; Bd would be required to determine whether application of rule impermissibly burdened protected activity, or whether E was not compelled to allow distribution of wage data on its property because other means available to disseminate material; anti U motivation irrelevant if rule itself invalid)

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**

(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

J. P. Stevens

8150-7799 Other

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(Bd's 8(a)(1) findings, concerning interview Ee was compelled to attend, vacated and case remanded to Bd so Bd could determine what type of interview was conducted; record contained no evidence concerning occurrences at interview)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**

(ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew that Ee's complaints were concerted activity)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(reconsideration of bargaining order partly based on unlawful discharge finding by Bd where ct overruled Bd finding of ULP)

8150-8800 Modification of order

Local 345, Utility Workers of New England (New England Power Service Company) **250 NLRB No. 007**

(where ct remanded case to Bd to allow parties opportunity to present objections to proposed amendments to R/O which Bd, *sua sponte*, made to ALJ's order, parties could not once again contest ULP findings adopted by Bd as this exceeded scope of remand)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**

(impermissibly broad order remanded to Bd for modification with respect to requirements for U access to plants and inclusion of notice in appropriate company publications)

8600 COSTS AND FEES

8667 AWARDS OF ATTORNEY FEES UNDER FRAP 38

J. P. Stevens

9100 CERTIORORI TO SUPREME COURT

9600 SUPREME COURT PROCEDURES

9675 REMAND FROM SUPREME COURT

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(decision to disclose petitioner's reports is reviewable agency action under APA and petioner is person adversely affected and aggreived w/i APA provision affording right of judicial review of agency action; remand to ct to consider whether contemplated disclosures would violate APA)

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. **435 U.S. 497 (SCt, 1978)**

(claims of impariment of contractual obligations and violation of due process remanded to District Ct where State enacted statute after collective bargaining agreement took effect)

N.L.R.B. v. Baylor University Medical Center **439 U.S. 9 (SCt, 1980)**

(judgment refusing to enforce Bd order vacated and case remanded to D.C. Ct of Appeals for reconsideration of no-solicitation rule with respect to hospital cafeteria in light of ct's decision in *Beth Israel Hospital v. N.L.R.B. No. 77-152 (June 22, 1978)*)

833 PROCEEDINGS ON CONTEMPT OF COURT JUDGMENT

0100 GENERALLY

1700 PROCEDURE

1770 EVIDENCE

N.L.R.B. v. Croft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**

(applying FOIA Exemption 7(A) in contempt proceeding, Special Master required Bd, ten days prior to hearing, to provide E with summary of expected testimony of exempted witnesses w/o disclosing their names, and required Bd, on day any such witness is to testify, to provide E with any affidavit or prior statement of such witness w/i its possession)

N.L.R.B. v. Croft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**

(affidavits taken by Bd in its investigation fall w/i FOIA Exemption 7(A) and need not be disclosed prior to hearing even in civil contempt cases as herein; there is no distinction between enforcement proceedings before ALJ and contempt proceedings as both are instituted to enforce compliance with Act, and Bd's prosecutorial function remains the same; risk of intimidation of witnesses because of premature disclosure is no less a risk in contempt cases; and it is irrelevant that there is no reason to suspect that E herein would attempt to coerce a witness)

1796 COSTS OF PROCEEDINGS

1796-6700 Taxable costs

1796-6742 Costs of litigation

N.L.R.B. v. Nichols of Ohio, Inc. et al. **No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))**

(Bd to be reimbursed for all costs and expenditures including reasonable counsel fees)

3300 ACTIONS CONSTITUTING CONTEMPT OF JUDGMENTS

3333 8(a)(3) JUDGMENTS

3333-9000 Inadequate offer of reemployment to discriminatees

N.L.R.B. v. Nichols of Ohio, Inc. et al. **No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))**

(delayed and inadequate reinstatement of salesclerks where they received lower pay, were assigned cleaning rather than selling jobs and worked fewer hours)

5000 TERMS OF PURGATION OF ADJUDICATION IN CONTEMPT

6700 SANCTIONS TO ENFORCE JUDGMENT

6725 FINES

N.L.R.B. v. Nichols of Ohio, Inc. et al. **No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))**

(prospective compliance fine of $10,000 on E and further compliance fine of $200 per day for each further day of noncompliance)

8300 DEFENSES

850 PROCEEDINGS ANCILLARY TO BOARD PROCEEDING

2000 SUBPOENA ENFORCEMENT PROCEEDINGS

2033 SCOPE OF COURT INQUIRY

2033-2000 Pendency of proceeding before Board

Ithaca College v. Thomas W. Seeler, RD **(unreported) (D Ct. NY, 1978)**

E's C seeking to enjoin pending Bd election and to require Bd to re-open hearing dismissed by ct for lack of jurisdiction, since Bd did not act contrary to specific provision of Act but, rather, exercised its statutory power, no substantial constitutional question was involved, and E failed to show likelihood of success on the merits and irreparable injury)

2033-6000 Exhaustion of administrative remedies to quash subpoena

Hedison Manufacturing Company v. Robert S. Fuchs, RD **C.A. No. 78-0498 (D Ct. RI, Oct. 10, 1978 (unreported))**

(in denying E a protective order to defer introduction of tape recording of speech of E's president to Ees, ct noted E had failed to exhause administrative remedies)

2050 MATERIALS SOUGHT BY SUBPOENA

2050-6000 Statements of witnesses

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**

(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

2083 DEFENSES TO COMPLIANCE

2083-2800 Infringement of constitutional rights

Hedison Manufacturing Company v. Robert S. Fuchs, RD **C.A. No. 78-0498 (D Ct. RI, Oct. 10, 1978 (unreported))**

(there is no Fifth or Fourteenth Amendment issue involved in admissibility of evidence in ULP proceeding)

4000 INJUNCTIVE RELIEF UNDER SECTION 10(j)

4032 SCOPE OF COURT INQUIRY

4032-6700 Reasonable cause to believe unfair labor practice has occurred

Samuel M. Kaynard, RD v. Mego Corp. **484 F.Supp. 167 (D Ct NY, 1980)**

(to decide whether bargaining unit is accretion to existing unit or not, it must first be determined that such bargaining unit truly represents uncoerced majority of Ees involved; here, majority of Ees at new plant had expressly disavowed bargaining representative who had entered into contract with E; thus, reasonable cause exists to support claim that recognition of U at new plant constitutes ULP)

4070 EMPLOYER CONDUCT INVOLVED

4070-0800 Assistance to union

Samuel M. Kaynard, RD v. Mego Corp. **484 F.Supp. 167 (D Ct NY, 1980)**

(to decide whether bargaining unit is accretion to existing unit or not, it must first be determined that such bargaining unit truly represents uncoerced majority of Ees involved; here, majority of Ees at new plant had expressly disavowed bargaining representative who had entered into contract with E; thus, reasonable cause exists to support claim that recognition of U at new plant constitutes ULP)

Edwin Youngblood, RD v. Solar Excavating, Inc. **486 F.Supp. 159 (D Ct OK, 1980)**

(request for temporary inj denied where E had recognized U w/o election and evidence does not show that ULP's were so pervasive as to raise serious question that majority of Ees did not freely sign U authorization cards)

4078 UNION CONDUCT INVOLVED

4078-2800 Strikes

Johansen v. Operating Engineers, Local 12 (Maas

4078-5600 Refusal to negotiate in good faith

Johansen v. Operating Engineers, Local 12 (Maas

4093 RELIEF AGAINST UNIONS

4093-4000 Instruct members to cease striking or picketing

Johansen v. Operating Engineers, Local 12 (Maas

4093-8000 Bargain in good faith

Johansen v. Operating Engineers, Local 12 (Maas

6000 INJUNCTIVE RELIEF UNDER SECTION 10(l)

6001 GENERALLY

George Squillacote, RD v. Racine Building

6001-7500 Nature and purpose

6001-7560 Preservation of status quo

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**

(Sec. 10(1) inj may be just and proper where necessary to preserve status quo so that Bd's ultimate decision will not be rendered moot by intervening events, or where necessary to prevent disruptions in commerce or future ULP's)

Reed Johnston, RD v. Thonet, a Simmons Company **No. C-C-78-357 (D CT. NC, Dec. 22, 1978 (unreported))**

(reinstatement of two Ees held *just and proper* to restore and preserve status quo where Bd met its burden of establishing reasonable cause to believe that the ULP's occurred, and its theories of fact and law were substantial and not frivolous)

6007 PROCEDURE

6007-4200 Parties

6007-4250 Intervention

6007-4250-5000 Charging party

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(request by general contractor who, as primary E, was charging party, to enjoin U from engaging in consumer appeal publicity directed against restaurant which contractor was constructing, denied, since publicity was not directed at contractor but at restaurant because of its contracting policies, and 8(b)(4) publicity proviso encompasses U's publicity which appeared *truthful* and was result of primary dispute with restaurant; moreover, contractor was not party to action herein and Bd, as petitioner, did not seek relief requested by contractor)

6021 SCOPE OF COURT INQUIRY

6021-0100 Generally

George Squillacote, RD v. Racine Building

6021-5000 Standard of court's inquiry

6021-5036 Reasonableness of regional director's interpretation

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**

(ct must conclude that legal theories relied on by RD are not w/o substance)

6021-5072 Reasonable cause to believe Act has been violated

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**

(ct must determine whether RD has reasonable cause to believe that elements of ULP are present, and RD need only show existence of credible evidence even if disputed, together with reasonable inferences which support his conclusions; district ct's findings herein held not erroneous)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(U's picketing, questioning workers on site, or calling and writing letters to neutral subcontractors and owner of site had objective of inducing or encouraging such individuals to c/d/b with primary general contractor, and U's direct and indirectpressure on secondary parties had as its goal pressuring of primary E to agree to U's contract demands; consequently, reasonable cause exists to believe 8(b)(4)(B) was violated)

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(reasonable cause to believe ULP exists where U, having dispute with contractor employed by neutral E, picketed gate set aside for exclusive use of neutral Ees and caused such Ees to engage in work stoppages, even though a gate had been reserved by E for exclusive use of contractor's Ees)

6021-5081 Existence of ULP not within court's province

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))**

(in passing upon application for inj, ct is not called upon to finally decide issues presented, rather ct's role is limited to determining whether there is some significant possibility that picketing herein would violate the Act)

George Squillacote, RD v. Racine Building

6049 GRANT OF RELIEF

6049-1200 Considerations in denying relief

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(request by general contractor who, as primary E, was charging party, to enjoin U from engaging in consumer appeal publicity directed against restaurant which contractor was constructing, denied, since publicity was not directed at contractor but at restaurant because of its contracting policies, and 8(b)(4) publicity proviso encompasses U's publicity which appeared *truthful* and was result of primary dispute with restaurant; moreover, contractor was not party to action herein and Bd, as petitioner, did not seek relief requested by contractor)

6049-1250 Mootness

Winifred D. Morio, RD v. Operating Engineers, Local Union No. 94-94A **79-Civ. 626-CSH (D Ct. NY, Feb. 26, 1979 (unreported))**

(no inj granted where picketing has ceased after settlement of contract issues because there must be existing condition for inj to issue notwithstanding possibility exists that U could revert to prior illegal conduct)

6049-2500 Considerations in granting relief

6049-2525 Damage to employer's business

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))**

(equitable relief found just and proper in view of tremendous pressure which could be brought to bear by picketing neutral Es with correspondingly little impact on primary E)

6049-2558 Nature of conduct involved

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(U, having dispute with contractor employed by neutral E, picketed gate set up by neutral E for exclusive use of its Ees, even though E had also reserved a gate for exclusive use of contractor's Ees)

6049-3700 Duration of injunction

6049-3767 Until final adjudication of Board

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(pending final disposition by Bd, U enjoined from engaging in picketing, orders, directives, instructions, requests or appeals, or by any other means, in threatening, coercing, or restraining neutral Es in order to force them to c/d/b/ with primary E, or to force or require primary E to entire into agreement prohibited by Sec. 8(e))

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(it is just and proper that, pending final disposition by Bd, U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6049-3775 Only so long as reserved gate is properly used

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(should primary E, its Ees, suppliers for whose exclusive use a gate was reserved by neutral E, be permitted to use such gate, then provisions of injunctive order herein shall be stayed and shall be reinstated only upon good cause shown in ct)

6049-7500 Acts charged and similar acts

6049-7522 'Any like or related acts or conduct'

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(it may fairly be anticipated that unless enjoined U will continue to repeat acts and conduct specified herein or similar or like acts and conduct in violation of 8(b)(4)(B)(i) and (ii))

6049-7588 Relief must be 'just and proper'

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(it is just and proper that, pending final disposition by Bd, U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6063 COURT OF APPEALS REVIEW

6063-6000 Scope of review

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**

(on appeal from order granting injunctive relief, role of this ct is usual limited one; it applies the clearly erroneous standard to district ct's findings and reviews for errors of law and abuse of discretion)

6084 CONDUCT INVOLVED

6084-2100 Coercion, intimidation, violence

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**

(district ct did not err in granting inj restraining U from violating 8(b)(4)(A) pending final disposition by Bd of ULP charges alleging U attempted to induce Ee to stop work and threatened E with future problems in order to force him to become member of multi-E association which represented trucking firms in their negotiations with U)

6084-3100 Reserved gate picketing

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(it is just and proper that, pending final disposition by Bd, U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6084-3400 Consumer boycott

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))**

(U enjoined from picketing Franchisees of primary E where Franchisees were found to be neutrals in U's dispute with primary E; moreover picketing of Franchisees was held not to be protected struck product picketing where business at Franchisees' stores was derived almost exclusively from sale of primary E's products)

6084-6100 Picketing

6084-6175 Recognition picketing

Johansen v. Plumbers, Local 398 (Robbins Plumbing and Heating) **No. CV 78-2939 (D Ct. CA, Aug. 9, 1978 (unreported))**

(inj granted where U had not filed timely ptn for election)

6084-6175—Cont.

Johansen v. Carpenters, Local 1752 (Eastport Development Co.) **No. CV 78-2520 (D Ct. CA (unreported))**

(inj granted where U had not filed timely ptn for election)

6084-6800 Product boycott

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))**

(U enjoined from picketing Franchisees of primary E where Franchisees were found to be neutrals in U's dispute with primary E; moreover picketing of Franchisees was held not to be protected struck product picketing where business at Franchisees' stores was derived almost exclusively from sale of primary E's products)

6084-7500 Secondary boycott

Scott v. Joint Council of Teamsters (Calif. Dump Truck Owners Assn.) **No. CV-79-0139 (D Ct. CA, Jan. 26, 1979 (unreported))**

(finding reasonable cause to believe U violated 8(b)(4)(ii)(B), ct granted temporary inj, pending final disposition by Bd, whereby U was enjoined from in any manner threatening or coercing owner-operators of for-hire dump trucks used by Es to leave construction project until they became members in good standing)

6084-9000 Maintaining or enforcing agreement prohibited by 8(e)

Scott v. Joint Council of Teamsters (Calif. Dump Truck Owners Assn.) **No. CV-79-0139 (D Ct. CA, Jan. 26, 1979 (unreported))**

(finding reasonable cause to believe Us and E associations in construction industry violated 8(e), ct granted temporary inj, pending final disposition by Bd, whereby Us and E associations were enjoined from maintaining or enforcing contract provisions which designated work to be done at site of construction as including any driving to, from or in connection with hauling materials to or from any source or disposal site on the one hand, and a geographical site of construction on the other hand)

6091 DEFENSES

6091-1000 Ally-relationship of secondary Employer

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))**

(Franchisees of primary E held neutral Es with respect to U's dispute with primary E, notwithstanding that primary E and Franchisees were wholly dependent on each other for economic survival, where each Franchise was owned by person or persons having no affiliation with primary E, and U only sought to picket some but not all of 750 Franchises with correspondingly little impact on primary E)

6091-1600 Consumer picketing

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))**

(picketing struck E's products held not w/i decision of Tree Fruits, 377 U.S. 58, where neutral Franchisees sold almost exclusively products of struck E, and thus picketing which followed struck products was necessarily aimed at the Franchisee's business in general)

6091-8400 Publicity proviso

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(request by general contractor who, as primary E, was charging party, to enjoin U from engaging in consumer appeal publicity directed against restaurant which contractor was constructing, denied, since publicity was not directed at contractor but at restaurant because of its contracting policies, and 8(b)(4) publicity proviso encompasses U's publicity which appeared *truthful* and was result of primary dispute with restaurant; moreover, contractor was not party to action herein and Bd, as petitioner, did not seek relief requested by contractor)

8000 INJUNCTIVE RELIEF UNDER SECTION 10(e)

867 PROCEEDINGS COLLATERAL TO BOARD PROCEEDINGS

0100 GENERALLY

2500 PROCEEDINGS AGAINST AGENCY

2520 PROCEEDINGS TO ENJOIN OR MANDAMUS BOARD ACTION

2520-6200 Jurisdiction of court

2520-6225 No jurisdiction except where constitutional issue or agency action contrary to express statutory provision

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. **No. 78 C 749 (D Ct. IL, Sept. 28, 1978 (unreported))**

(determination of whether E is carrier or not is factual in nature and not dependant solely on construction of statute; thus, District Ct precluded from jurisdiction)

2520-6225-0100 Generally

National Engineers and Professionals Association, et al. v. N.L.R.B. et al. **CV78-2138-RMT (D Ct. CA, July, 31, 1978 (unreported))**

(ct has no constitutional basis to assert jurisdiction where U seeking to have ct award inj relief requiring Bd to hold mail ballot election because generally District Cts lack jurisdiction to review Bd rulings in R proceedings and issue does not fall w/i any exceptions to rule)

2520-6225-4000 Actions found not contrary to express statutory provisions

Touche Ross

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. **599 F.2d 816 (C.A. 7, 1979)**

(appellate ct upheld district ct's decision that it lacked subject matter jurisdiction to review Bd decision dismissing representation ptn on grounds that company was excluded from NLRA Sec. 2(2) definition of E as it was an air carrier subject to jurisdiction of RLA, and that its petitioned-for truckdrivers' work was integral part of its air carrier operations; Bd did not disregard clear, specific statutory directive, and there was support for its decision)

Carol Estes and 166 Other Warehouse Facility Employees v. N.L.R.B. **No. 78-4068 (D Ct. KS, Jan. 5, 1979 (unreported))**

(ct lacked jurisdiction over suit challenging Bd's application of its *blocking charge rule* to decertification ptn; at time RD applied rule and dismissed ptn, there were pending not merely ULP charges filed by U but formal Cs issued on behalf of Bd concerning those charges, and it was reasonable to assume RD had some idea whether U's charges were substantial and whether representation election could fairly be held)

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(district ct has no jurisdiction to review Bd decision under *Leedom v. Kyne* rationale, 358 U.S. 184, unless there was clear disregard by NLRB of specific and unambiguous statutory directive contained in the Act)

Combustion Engineering, Inc., etc. v. Curtis L. Mack, RD, etc. **CIV-2-79-67 (D Ct. TN, May 8, 1979 (unreported))**

(no denial of due process by Bd refusal to delay election to permit E to retain additional counsel; Bd orders in certification proceedings are not directly reviewable by cts and none of the judicially recognized exceptions appear to be applicable to instant situation where E had not engaged sufficient counsel to handle its labor-management matters seasonably)

2520-6225-6000 Actions found to raise constitutional questions

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct. IL)**

(GC's refusal to issue complaint based upon alleged ULPs, not violation of a constitutional right, and hence district ct lacked subject matter jurisdiction to review GC's refusal)

2520-6225-8000 Actions found not to raise constitutional questions

Combustion Engineering, Inc., etc. v. Curtis L. Mack, RD, etc. **CIV-2-79-67 (D Ct. TN, May 8, 1979 (unreported))**

(no denial of due process by Bd refusal to delay election to permit E to retain additional counsel; Bd orders in certification proceedings are not directly reviewable by cts and none of the judicially recognized exceptions appear to be applicable to instant situation where E had not engaged sufficient counsel to handle its labor-management matters seasonably)

2520-7500 Board actions sought to be enjoined

2520-7533 Representation proceedings

2520-7533-4200 Conduct of election

Gould, Inc. v. Robert S. Fuchs, et al. **486 F.Supp. 164 (D Ct. CT, 1980)**

(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

National Engineers and Professionals Association, et al. v. N.L.R.B. et al. **CV78-2138-RMT (D Ct. CA, July, 31, 1978 (unreported))**

(ct has no constitutional basis to assert jurisdiction where U seeking to have ct award inj relief requiring Bd to hold mail ballot election because generally District Cts lack jurisdiction to review Bd rulings in R proceedings and issue does not fall w/i any exceptions to rule)

2520-8700 Board action sought to be mandated

2520-8733 Representation proceedings

2520-8733-2500 Conduct of election

Gould, Inc. v. Robert S. Fuchs, et al. **486 F.Supp. 164 (D Ct. CT, 1980)**

(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

2540 PROCEEDINGS TO ENJOIN OR MANDATE GENERAL COUNSEL ACTION

2540-5000 Jurisdiction of court

2540-5001 Generally

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(in dismissing action for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file complaint and to require him to do so, ct held that, unless ct can ascertain that GC acted in excess of his statutorily delegated authority, ct has no jurisdiction to require him to issue complaint, and case dismissed for want of jurisdiction, since Act is not so clear that ct can say with reasonable certainty that GC exceeded his delegated authority in ruling that state agency was not statutory E)

2540-5033 No statutory basis for jurisdiction to review

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(GC's refusal to file complaint alleging ULP)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**

2540-5033—Cont.

(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**
(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-5067 Arbitrary and capricious action constituting denial of constitutional due process

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**
(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-6700 Action sought to be enjoined

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**
(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-8300 Action sought to be mandated

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(ct affirmed district ct's dismissal of action by E association for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file requested complaint and to require him to file complaint; GC's refusal to issue complaint is ordinarily not reviewable by federal cts unless failure to act turns on mistake of law, and GC's opinion in instant case that state agency is not statutory E, and therefore proscriptions of Sec. 8(e) do not apply was not in excess of his statutorily delegated authority)

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**
(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

2540-8367 Issuance and prosecution of complaint

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**
(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL)**
(ptn to require RD and GC to reverse their decision not to issue complaint or alleged ULP charges, dismissed, since the decision was w/i RD's and GC's discretion and ct has no jurisdiction to mandamus the RD and GC)

2590 ACTIONS FOR DECLARATORY JUDGMENT

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(ct affirmed district ct's dismissal of action by E association for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file requested complaint and to require him to file complaint; GC's refusal to issue complaint is ordinarily not reviewable by federal cts unless failure to act turns on mistake of law, and GC's opinion in instant case that state agency is not statutory E, and therefore proscriptions of Sec. 8(e) do not apply was not in excess of his statutorily delegated authority)

2595 DISCOVERY

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**
(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

5000 PROCEEDINGS BY BOARD TO PROTECT BOARD JURISDICTION

5020 ENJOINING STATE EXERCISE OF JURISDICTION

5020-3300 STATE COURT PROCEEDINGS

Arel Lynn Rodgers v. John H. Fanning, et al. **No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))**
(Bd's mtn for dismissal of third party C filed by individual for indemnity against Bd in malicious prosecution suit brought by E in state ct against individual for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, granted; suits against Bd are suits against the United States and cannot be maintained w/o consent of Congress, and exclusive remedy for tort claims is Federal Tort Claims Act which, however, excludes any claims arising out of malicious prosecution; consequently, third party C against Bd cannot be maintained)

Arel Lynn Rodgers v. John H. Fanning, et al. **No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))**
(Bd's mtn to dismiss malicious prosecution suit brought by E in state ct against discharged Ee for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, denied; although preemption is required when state law clearly conflicts with policies established by federal law, threat that malicious prosecution suits would chill exercise of right of access to Bd is insufficient to outweigh interests of state in protecting its citizens from such suits)

Arel Lynn Rodgers v. John H. Fanning, et al. **No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))**
(Bd's mtn to stay malicious prosecution proceedings in state ct brought by E against discharged Ee for filing false charges and fabricating evidence in prior Bd ULP proceeding, granted; Bd's primary jurisdiction does not extend to cases in which E, as herein, has no acceptable method of invoking, or inducing other party to invoke Bd's jurisdiction; consequently, while action was not necessarily preempted, ct deferred to Bd's determination of probable cause to believe that suit herein infringes on protected conduct and stayed action pending Bd's determination)

Arel Lynn Rodgers v. John H. Fanning, et al. **No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))**
(Bd's mtn to dismiss malicious prosecution suit brought by E in state ct against discharged Ee for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, denied; although preemption is required when activities are either arguably protected or arguably prohibited, preemption is not justified when aggrieved party does not have a reasonable opportunity to invoke Bd's jurisdiction which E could not have done herein and, consequently, arguably protected nature of Ee's conduct was not sufficient to justify preemption)

5060 INTERVENTION IN FEDERAL COURT PROCEEDINGS

5060-6700 Bankruptcy proceedings

In re W. T. Grant Company, and Charles G. Rodman, as Trustee of the Estate of W.T. Grant Company, Bankrupt v. Alton Rinier, as agent for Certain Employees of Bankrupt **620 F.2d 319 (C.A. 2, 1980)**
(ct held executory contract of Ees of debtor-in-possession is binding on latter if it receives benefits under it which occurred here when debtor-in-possession permitted workers to continue in its employ during Chapter XI proceeding)

In re W. T. Grant Company, and Charles G. Rodman, as Trustee of the Estate of W.T. Grant Company, Bankrupt v. Alton Rinier, as agent for Certain Employees of Bankrupt **620 F.2d 319 (C.A. 2, 1980)**
(ct held severance pay claims of bankrupt's Ees are entitled to first priority as costs and expenses of administration; severance pay is compensation for termination and is not a form of wages that accrues from day to day)

5060-6767 To protect proceeding or order

Shippers Interstate Service, Inc. v. N.L.R.B. **618 F.2d 9 (C.A. 7, 1980)**
(where company is being reorganized rather than liquidated and assets are not threatened, Bankruptcy Rule 11-44 shall not apply and regulatory proceedings of NLRB are not subject to automatic stay provisions of that rule)

7500 CERTIFICATION OF QUESTIONS TO BOARD BY COURT

7500—Cont.

The Carpenters District Council of North Central Texas v. North Texas Contractor Assoc. et al. **No. CA3-76-1151-F (D Ct. TX, Feb. 21, 1979 (unreported))**

(on mtn of Bd that it could only decide contractual questions which ct had asked Bd to decide in context of ULP proceedings, ct withdrew its certification of questions to Bd)

883 PROCEEDINGS UNDER OTHER STATUTES

2500 FREEDOM OF INFORMATION ACT

2501 GENERALLY

2501-3300 Purpose of Act

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

2501-6700 Legislative history

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(Legislative history of FOIA shows provisions exempting specified material from disclosure were only meant to permit agency to withhold information--not meant to mandate non disclosure)

2550 PRODUCIBILITY OF DOCUMENTS

2550-0100 Generally

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. **600 F.2d 1027 (C.A. 2, 1979)**

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**

(applicability of FOIA exemptions must be determined in context of specific individual documents and request for *any documents indicating Region's final determination of the petitioner's showing of interest or lack thereof* is too general)

2550-1400 Advice and appeals memoranda

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(advice memorandum privileged from disclosive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

2550-2100 Intra-agency memoranda

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(memorandum prepared by Bd Ee assigned to investigate case for consideration by RD in making final determination whether to issue C, held exempt, where memorandum recommends action on basis of tentative conclusions reached by a committee of Bd Ees)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(memorandum transmitting Regional Office file to Office of Appeals with Acting RD's comment on appeal at time when no action whatever had begun on deciding appeal, held w/i Exemption 5 protection of predecisional communications; RD's comment was clearly intra-agency advisory opn w/i scope of *executive privilege*)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(memorandum to acting RD setting forth acting Regional attorney's Review of Appeals in a case, hold exempt as intra-agency predecisional communication)

2550-2800 Statements of witnesses

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(report by Bd Ee summarizing facts related to him in interview with certain, named individual, held w/i scope of Exemption 5, especially since signed affidavit of said individual relating to same factual matters had been made available to party seeking report)

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(district ct is w/o jurisdiction to entertain E's C of Bd's refusal to issue investigatory subpoenas requested under 29 USC Section 161(l), where subpoenas required prehearing release of all evidence in Bd's control pertaining to the charges, including documents as well as names, addresses, and statements of witnesses; prehearing discovery questions are committed to Bd's discretion)

The Capital Times Company v. N.L.R.B. **483 F.Supp. 247 (D Ct. WI) (1980)**

(refusal to disclose statements and affidavits obtained by Bd agents during their investigation of ULP charge filed by plaintiff upheld notwithstanding that charge was dismissed and case closed; *exemption 7(a) of FOIA* correctly relied upon by Bd, since statements sought by plaintiff were relevant to pending enforcement proceeding which grew out of labor controversy in which plaintiff was involved but not as party)

2550-4200 Names of witnesses

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(district ct is w/o jurisdiction to entertain E's C of Bd's refusal to issue investigatory subpoenas requested under 29 USC Section 161(l), where subpoenas required prehearing release of all evidence in Bd's control pertaining to the charges, including documents as well as names, addresses, and statements of witnesses; prehearing discovery questions are committed to Bd's discretion)

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2550-7000 Authorization cards

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. **600 F.2d 1027 (C.A. 2, 1979)**

(authorization cards are exempt from discovery during Bd proceedings and from disclosure under FOIA, but here where cards are material to defendants defense of criminal charges against them their fundamental right to due process of law must be balanced against confidentiality of cards and disclosure is proper but only to defendants' attorneys)

American Airlines, Inc. v. National Mediation Board; et al. **588 F.2d 863 (C.A. 2, 1978)**

(U authorization cards held exempt from disclosure as commercial information where U supplied information to National Mediation Board in reliance on regulations that it would be kept confidential; information relates to delicate area of labor relations as it deals with U's effort to obtain majority support and certification and disclosure would adversely affect U's competative position with other Us and e itself)

Howard Johnson Company, Inc. v. N.L.R.B. **618 F.2d 1 (C.A. 6, 1980)**

(district ct reversed and case remanded to Bd with directions to enter summary judgment in favor of Bd position on U authorization cards falling w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**

(Exemption 6 of FOIA precludes E from obtaining signed U authorization cards or other Bd documents which reveal voting preferences of individual Ees because such disclosure would be an invasion of personal privacy; ct held authorization cards fell w/i meaning of *similar files* of exemption refusing to give term narrow and technical meaning)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

2567 SCOPE OF EXEMPTIONS

2567—Cont.

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(Office of Appeals case progress sheet which memmorialized case history on appeal indicating information such as when appeal was filed and when it was decided, not exempt under FOIA)

2567-3300 Exemption 4

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(Legislative history of FOIA shows provisions exempting specified material from disclosure were only meant to permit agency to withhold information--not meant to mandate non disclosure)

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Quickie Manufacturing Corp. v. N.L.R.B. **No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))**

(Bd Form 4069 held more appropriate under Exemption 5 regarding *memorandums* than Exemption 4, since it involves a particular document rather than general information)

2567-5000 Exemption 5

Quickie Manufacturing Corp. v. N.L.R.B. **No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))**

(Form 4069 held not *final opn* compelling disclosure but exempt because w/i executive privilege protecting *memoranda* which would *intrude on predecisional processes*)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(advice memorandum privileged from disclosive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

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(report by Bd Ee summarizing facts related to him in interview with certain, named individual, held w/i scope of Exemption 5, especially since signed affidavit of said individual relating to same factual matters had been made available to party seeking report)

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(memorandum prepared by Bd Ee assigned to investigate case for consideration by RD in making final determination whether to issue C, held exempt, where memorandum recommends action on basis of tentative conclusions reached by a committee of Bd Ees)

2567-6700 Exemption 6

Howard Johnson Company, Inc. v. N.L.R.B. **618 F.2d 1 (C.A. 6, 1980)**

(district ct reversed and case remanded to Bd with directions to enter summary judgment in favor of Bd position on U authorization cards falling w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**

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(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

2567-8300 Exemption 7

2567-8367 1974 Amendment

2567-8367-1400 Exemption 7(A)

Quickie Manufacturing Corp. v. N.L.R.B. **No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))**

(Form 4069 would not be held exempt under Exemption 7, since asserted possible use in future ULP proceeding is not sufficient where ct precedent has held relationship to pending formal proceeding was required)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

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2583 SUITS TO ENFORCE OBLIGATION

2583-1500 Court procedure

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. **600 F.2d 1027 (C.A. 2, 1979)**

2583-2000 Exhaustion of administrative remedies

Quickie Manufacturing Corp. v. N.L.R.B. **No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))**

(plaintiff not required to exhaust administrative remedies by appealing GC's refusal of FOIA request since Bd's adament position against disclosure of documents relative to elections and its winning SCt reversal of decision in only circuit where its position was rejected have shown appeal would be futile; decision whether to require exhaustion of administrative remedies is discretionary, and plaintiff's time constraint given the imminence of the election outweighs considerations favoring requirement of an administrative appeal)

The Capital Times Company v. N.L.R.B. **483 F.Supp. 247 (D Ct. WI) (1980)**

(statutory policy allows agency to determine *first* the merits of FOIA request)

The Capital Times Company v. N.L.R.B. **483 F.Supp. 247 (D Ct. WI) (1980)**

(statutory policy allows agency to determine *first* the merits of FOIA request)

2583-4000 Enjoining of Board proceedings

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(although district ct does have jurisdiction to hear plaintiff's claims under FOIA and if appropriate to order production of Bd records, the ct lacks power to enjoin Bd proceedings in order to enforce requirements of FOIA)

2583-5500 Issuance of subpoenas

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(district ct is w/o jurisdiction to entertain E's C of Bd's refusal to issue investigatory subpoenas requested under 29 USC Section 161(l), where subpoenas required prehearing release of all evidence in Bd's control pertaining to the charges, including documents as well as names, addresses, and statements of witnesses; prehearing discovery questions are committed to Bd's discretion)

2583-6000 Stays pending appeal

National Steel Products Company v. N.L.R.B. **C78-293A (D Ct GA, Oct. 12, 1978 (unreported))**

(ct granted Bd stay on order prohibiting Bd from conducting consolidated R and ULP hearing unless Bd turned over requested statements of witnesses, since decision by SCt in *Robbins Tire and Rubber Co.* virtually ensures that

Bd will succeed on merits of appeal and made issuance of inj improper and unnecessary to protect any legally cognizable rights or plaintiff)

2583-8000 Attorney's fees and costs

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(request for reasonable attorney's fees from United States, denied as inappropriate even assuming, as contended, that party requesting such fees had *substantially prevailed*, because substantial portion of file it requested had been disclosed since commencement of instant litigation; both parties had operated in good faith toward resolving controversy and each should bear its own counsel fees)

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CLASSIFIED INDEX
of
NATIONAL LABOR RELATIONS BOARD DECISIONS
and
RELATED COURT DECISIONS

Cantin

DECEMBER 1980

PREFACE

The Board and court decision classifications and scope notes in this classified index have been prepared by the Board's Legal Research and Policy Planning Branch, Division of Advice, Office of the General Counsel, as a selective index to decisions issued by the Board and to related court decisions. They are in no sense official rulings or pronouncements of the Board, nor are they to be viewed as official interpretations of Board or court decisions.

The classification system used is that established by the Classification Outline for Decisions of the National Labor Relations Board and Related Court Decisions. As the format of this index publication renders it unsuitable for direct access to classification headings, reference should be made to the Classification Outline for the subject matter headings desired for research and for their associated numerical code identification. Instructions for the use of the Outline and this Index are contained in the preface of the Outline.

This publication covers Board decisions issued from January 1, 1980, through December 31, 1980, (part of Volume 247 through part of Volume 253) and contains court decisions issued from January 1, 1980, through December 31, 1980. No unreported court decisions are included. The index entries supplement those published in the publication of this same title dated June 1974, December 1976, and December 1979, which are available from the Superintendent of Documents, Washington, D.C. 20402. Entries in the publication of same title dated August 1980, are cumulated in this publication and the August 1980 publication should be discarded.

Board decisions are cited by volume and folio number. Court decisions are cited by official reporter citation where available and by other commercial services when not available. JD references refer to Administrative Law Judge's decisions adopted by the Board under section 10(c) of the National Labor Relations Act, as amended, and section 102.48 of the Board's Rules and Regulations. DS references refer to Decisions by Stipulation issued by the Board upon approval of formal settlement agreements in unfair labor practice proceedings.

Copies of Decisions by Stipulation and Administrative Law Judge Decisions are available upon request directed to the Freedom of Information Officer, N.L.R.B., Washington, D.C. 20570, subject to payment of fees in accordance with the Agency fee schedule. Such requests should specify the case, name, the date of issuance and the case number for each document requested. These decisions will also be available for inspection in the public reading room of the National Labor Relations Board, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. Copies will be available to any member of the public upon a payment of direct duplication costs.

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ABBREVIATIONS

affd	Affirmed
affg	Affirming
ALJ	Administrative Law Judge
ans	Answer
br	Brief
Bd	Board
C	Complaint
c/d	Cease and desist
c/d/b	Cease doing business
CongRec	Congressional Record
ct	Court
distg	Distinguished
D/O	Decision and order
E	Employer
Ee	Employee
enf/rev	Enforcement and review proceedings
Gc	General Counsel
inj	Injunction
LMRA	Labor Management Relations Act, as amended
mtn	Motion
NMB	National Mediation Board
opn	Opinion
P&M	Production and Maintenance
ptn	Petition
qcr	Question concerning representation
R	Representation
RD	Regional Director
R/O	Remedial order
R/R	Rules and Regulations
SCt	Supreme Court
SIC	Standard Industrial Classification
TRO	Temporary restraining order
U	Union
Us	Unions
ULP	Unfair labor practice(s)
w/o	Without
w/i	Within

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100 NLRA, AS AMENDED

111 CONSTITUTIONALITY OF APPLICATION OF NLRA

5000 FIRST AMENDMENT TO CONSTITUTION

Harborcreek School for Boys **249 NLRB No. 177**

(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

World Evangelism, Inc. **248 NLRB No. 117**

(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds and Ees' performance of work necessarily associated with those commercial activities)

RJR Communications, Inc. **248 NLRB No. 124**

(order requiring E to resume 6 o'clock newscast does not infringe E's first amendment rights where newscast discriminatorily discontinued and media *has no special privileges to invade rights and liberties of others*)

Mid American Health Services, Inc. **247 NLRB No. 109**

(final determination concerning whether Bd's asserting jurisdiction over nursing home run by Seventh Day Adventists is unconstitutional under the 1st amendment must come from cts)

Catholic Community Services **247 NLRB No. 103**

(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

N.L.R.B. v. Lay Faculty Association, Local 1261 **623 F.2d 818 (C.A. 2, 1980)**

(ct rejected Bd's claim to jurisdiction over Catholic high school notwithstanding title and responsibility for operating school visited in lay board, since it is suffusion of religion into curriculum and mandate of faculty to infuse students with religious creed which create conflict with Religion Clauses, not vesting of title, and Bd could not avoid becoming entangle with religious mission of school in setting of mandatory collective bargaining)

St. Elizabeth Community Hospital v. N.L.R.B. **625 F.2d 123 (C.A. 9, 1980)**

(First Amendment challenge to Bd's jurisdiction over charitable hospital operated by religious order held timely raised, notwithstanding contention that issue could have been litigated at R proceedings before RD and no new or previously unavailable evidence was offered or special circumstances alleged to require Bd's consideration, since it is sufficient that hospital raised First Amendment issue in R proceedings before Bd and did not defer its challenge to enforcement proceedings; case remanded to Bd for further consideration in light of SCt's opinion in *NLRB v. Catholic Bishop*, 440 U.S. 490)

5800 FIFTH AMENDMENT TO CONSTITUTION

N.L.R.B. v. Hy-Lond Enterprises, Inc., d/b/a Hy-Lond Convalescent Hospital **Dkt. No. 78-1713 (C.A. 9, March 21, 1979 (unreported))**

(failure to hold evidentiary hearing on E's objections to elections did not deny E right to due process of law)

6300 TENTH AMENDMENT TO CONSTITUTION

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. **497 F.Supp. 599 (D Ct. FL, 1980)**

(Bd's assertion of jurisdiction over jai alai industry does not violate Tenth Amendment, as regulation if that industry does not impose a direct obligation upon the state but is indirect interference through Congressional effort to regulate same object)

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. **497 F.Supp. 599 (D Ct. FL, 1980)**

(District Ct will assert jurisdiction under *Leedom v. Kyne*, 358 U.S. 184, where circumstances show that party seeking relief will not otherwise have avenue for review if jurisdiction declined, and here, if E acceded to certification and Bd order so that no ULP proceeding will ensue, State may be precluded from seeking review under Sec. 10 of Act; alternatively, D Ct could assert jurisdiction under *Fay v. Douds*, 172 F.2d 720 since there is substantial claim by State that action taken by Bd has violated constitutional rights of complaining party; State's 10th Amendment rights)

7500 FOURTEENTH AMENDMENT TO CONSTITUTION

122 PURPOSE AND POLICY OF NLRA

3300 LEGISLATIVE HISTORY

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**

(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**

(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(1947 amendment of Section *10(c)* of NLRA does not address *in part* or *dominent motive* analysis or allocations of burdens *but* legislative history of such amendment does: E required to make out what is actually affirmative defense to overcome *prima facie* case of wrongful motive)

Mid American Health Services, Inc. **247 NLRB No. 109**

(legislative history of 1974 health care amendments to Act indicates that Congress intended Act to apply to health care institutions operated by religious institutions thus nursing home run by Seventh Day Adventists comes w/i Bd's jurisdiction)

6700 SAVINGS PROVISION

133 RELATIONSHIP TO OTHER STATUTES AND PUBLIC POLICY

0100 GENERALLY

1200 SECTION 302(a) - RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

2500 LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(*29 U.S.C. Section 186* was intended to prevent corruption by labor and management, and does not apply to Bd decisions which are enforced through ct order)

3000 MARITIME LAWS

3500 EXECUTIVE ORDERS

3600 OCCUPATIONAL SAFETY AND HEALTH ACT

3700 URBAN MASS TRANSPORTATION ACT OF 1969

3800 INTERSTATE COMMERCE ACT

3900 IMMIGRATION AND NATURALIZATION ACT

4000 EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**

(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

5000 FEDERAL SERVICE CONTRACT ACT OF 1965

5600 PRIVACY ACT

5800 FEDERAL WIRETAPPING STATUTE

6200 FREEDOM OF INFORMATION ACT

Ronald Hackenberger d/b/a Ron's Trucking Service v. N.L.R.B. **628 F.2d 966 (C.A. 6, 1980)**

(ct held that E failed to establish that Bd had improperly computed back pay of discharged Ee where ct rejected E's contention that E was prevented from showing that Ee failed to act reasonably to mitigate his damages because Bd denied FOIA request for information in its possession relating to interim employment, since counsel for E failed to request continuance or adjournment in order to familiarize himself with this material when information concerning interim employment was provided at or near beginning of supplemental back pay proceeding)

6201 GENERALLY

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**

(applicability of FOIA exemptions must be determined in context of specific individual documents and request for *any documents indicating Region's final determination of the petitioner's showing of interest or lack thereof* is too general)

6225 (EXEMPTION 4) TRADE SECRETS

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

American Airlines, Inc. v. National Mediation Board; et al. **588 F.2d 863 (C.A. 2, 1978)**

(U authorization cards held exempt from disclosure as commercial information where U supplied information to National Mediation Board in reliance on regulations that it would be kept confidential; information relates to delicate area of labor relations as it deals with U's effort to obtain majority support and certification and disclosure would adversely affect U's competative position with other Us and e itself)

6250 EXEMPTION 5

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(advice memorandum privileged from disclosive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

6260 (EXEMPTION 6)

Howard Johnson Company, Inc. v. N.L.R.B. **618 F.2d 1 (C.A. 6, 1980)**

(district ct reversed and case remanded to Bd with directions to enter summary judgment in favor of Bd position on U authorization cards falling w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**

(Exemption 6 of FOIA precludes E from obtaining signed U authorization cards or other Bd documents which reveal voting preferences of individual Ees because such disclosure would be an invasion of personal privacy; ct held authorization cards fell w/i meaning of *similar files* of exemption refusing to give term narrow and technical meaning)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

6275 EXEMPTION 7

N.L.R.B. v. Croft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**

(affidavits taken by Bd in its investigation fall w/i FOIA Exemption 7(A) and need not be disclosed prior to hearing even in civil contempt cases as herein; there is no distinction between enforcement proceedings before ALJ and contempt proceedings as both are instituted to enforce compliance with Act, and Bd's prosecutorial function remains the same; risk of intimidation of witnesses because of premature disclosure is no less a risk in contempt cases; and it is irrelevant that there is no reason to suspect that E herein would attempt to coerce a witness)

N.L.R.B. v. Croft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**

(applying FOIA Exemption 7(A) in contempt proceeding, Special Master required Bd, ten days prior to hearing, to provide E with summary of expected testimony of exempted witnesses w/o disclosing their names, and required Bd, on day any such witness is to testify, to provide E with any affidavit or prior statement of such witness w/i its possession)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

6275—Cont.

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

6287 APPEALS FROM INITIAL DETERMINATION

The Capital Times Company v. N.L.R.B. **483 F.Supp. 247 (D Ct. WI) (1980)**

(statutory policy allows agency to determine *first* the merits of FOIA request)

7200 ANTITRUST STATUTES

7300 FEDERAL MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

7500 ECONOMIC STABILIZATION ACT OF 1971

7600 DAVIS BACON ACT

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(contention that definition of jobsite work in construction industry proviso of 8(e) should be indentical to definition of jobsite work in Davis-Bacon Act, rejected, since that Act broader in coverage as remedial statute than 8(e) proviso)

8100 RAILWAY LABOR ACT

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**

(punitive damages were not permitted under Railway Labor Act for U's breach of duty of fair representation)

Ground Services, Inc. **253 NLRB No. 080**

(Bd refused to assert jurisdiction over corporation engaged in business of providing ground or fleet service to air carriers and other enterprises where National Mediation Board advised that corporation and its Ees were subject to the Railway Labor Act in view of nature of activities and control exercised by air carriers)

Air Cleveland, Inc. **253 NLRB No. 059**

(ptn of Ees of E engaged in providing certain ground services to air carrier dismissed, since National Mediation Board, by request of Bd, determined that E was w/i scope of *Title II of the Railway Labor Act)*

Mercury Service, Inc.; Mercury Refueling, Inc.; and Crew Transit **253 NLRB No. 057**

(jurisdiction not asserted over E engaged in providing support services for international air carriers where Bd advised by National Medication Board that Es activities and Ees performing activities were subject to Railway Labor Act)

Missouri-Illinois Central Industries, Limited **252 NLRB No. 143**

(Bd did not assert jurisdiction over E engaged in freight handling services to various common carriers engaged in interstate commerce where *National Mediation Board* found activities of E and Ees performing such activities were subject to the *Railway Labor Act*)

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. **No. 78 C 749 (D Ct. IL, Sept. 28, 1978 (unreported))**

(Bd correctly refused to order election among E's truckdrivers and deferred to ruling by National Mediation Board that E was carrier under Railway Labor Act and not subject to Bd jurisdiction)

8200 BANKRUPTCY STATUTES

Ralph Schaffner, an Individual d/b/a Schaffner Construction Co. **252 NLRB No. 136**

(Respondent's contention that ptn for summary judgment in backpay proceeding should be stayed pending discharge of Respondent's ptn from Bankruptcy ct in which Bd and discriminatees are named as creditors, rejected, since adjudication in Bankruptcy does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; since mtn to stay did not specifically deny or respond in any way to allegations of backpay specification, allegations of specification are deemed admitted)

Miami Foundry Corporation **252 NLRB No. 002**

(mtn to stay ULP proceedings pending final disposition of ptn for arrangement under Chapter XI of Bankruptcy Act denied where Bd has exclusive jurisdiction to hear and decide ULP cases to final disposition)

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**

(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**

(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive jurisdiction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

Retail Delivery Service, Inc., and Robert A. Baime, Esq. **JD-486-80**

(as receiver of E under Bankruptcy Act and trustee in bankruptcy, named individual has been successor in law or *alter ego* of E, and Bd's order of reparation for backpay due Ee is provable against said trustee as debt of bankrupt E owed to Bd as agent for Ee)

Shippers Interstate Service, Inc. v. N.L.R.B. **618 F.2d 9 (C.A. 7, 1980)**

(where company is being reorganized rather than liquidated and assets are not threatened, Bankruptcy Rule 11-44 shall not apply and regulatory proceedings of NLRB are not subject to automatic stay provisions of that rule)

8300 FOREIGN SOVEREIGN IMMUNITY ACT OF 1976

8400 FEDERAL COMMUNICATIONS ACT

8600 FEDERAL TAX CODE

8700 STATE STATUTES

8775 MUNICIPAL ORDINANCES

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(State ct decisions limited to interpretation of term *Es* for purposes of workmen's compensation coverage were not dispositive of E-Ee relationship in context of NLRB particularly in light of 1947 amendments to that legislation)

8900 FEDERAL RULES OF CIVIL PROCEDURE

9000 TITLE (VII) OF THE CIVIL RIGHTS ACT

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**

(mtn for summary judgment against E dismissed where it was clear from record that no genuine issues as to facts material to resolution of instant action existed; ct not pursuaded that plaintiff made *prima facie* case regarding E's discrimination against her for U activities by firing her and not granting her maternity leave)

9100 SOCIAL SECURITY ACT-MODEL CITIES PROGRAM

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**

(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

144 CONSTRUCTION

5000 LEGISLATIVE HISTORY

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**
(statute does not define the term *excessive* The legislative history of the Act shows that the purpose of Section 8(b)(5) was to prevent the circumvention of Sections 8(a)(3) and 8(b)(2), which interdict closed shops, by the device of requiring new members to pay exhorbitant initiation fees)

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**
(Bd held law firm's clerical and support staff not *confidential* workers under *Bell Aerospace* and the *Taft-Hartley* legislative history, adhering to its traditional restrictive definition of confidential workers as individuals acting in confidential capacity to those Ees formulating, determining and effectuating management's labor relations policies for their own E)

7500 COURT INTERPRETATION OF STATUTORY PROVISIONS

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(*Mt. Healthy*, 429 U.S. 274 (1977), procedure accomodates legitimate competing interests inherent in dual motivation cases, while at same time serving to effectuate policies and objectives of Section *8(a)(3)* of Act)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(while deference is to be given to agency's intepretation of statute it administers, it is cts that have final responsibility under constitution on matters of statutory interpretation)

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**
(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

155 AMENDMENTS OF NLRA

2000 CONSTITUTIONALITY OF AMENDMENTS

4000 EFFECTIVE DATE OF APPLICATION

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

6000 RETROACTIVE APPLICATION

8000 EFFECT OF AMENDMENTS

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) **252 NLRB No. 181**
(Section 14(b))

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(1947 amendment of Section *10(c)* of NLRA does not address *in part* or *dominent motive* analysis or allocations of burdens *but* legislative history of such amendment does; E required to make out what is actually affirmative defense to overcome *prima facie* case of wrongful motive)

Bon Secours Hospital, Inc. **248 NLRB No. 019**
(1974 health care amendments show intent of Congress that Ees of religiously operated hospitals, unlike schools, are covered as it specifically refused to exclude such hospitals from coverage under Act; therefore assertion of jurisdiction proper)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(State ct decisions limited to interpretation of term *Es* for purposes of workmen's compensation coverage were not dispositive of E-Ee relationship in context of NLRB particularly in light of 1947 amendments to that legislation)

166 SEPARABILITY OF PROVISIONS

177 STATUTORY DEFINITIONS

0800 'PERSON'

1600 'EMPLOYER'

1601 GENERALLY

Taylor Hospital **249 NLRB No. 031**
(hospital, rather than vending company responsible for dietary department, found E of dietary Ees at hospital where hospital demonstrated its authority to determine policies, terms and conditions of employment for dietary Ees, and community of interest of dietary Ees with hospital's other Ees had not been diminished by hospital's arrangement with vending company)

United States Steel Corporation **248 NLRB No. 090**
(safety and education plan found not an E notwithstanding plan is composed of 79 E-members, including 3 Es who fund and sponsor a school preparing individuals to become licensed officers pursuant to agreement)

1633 PERSONS FOUND TO BE EMPLOYERS

1633-5000 Combinations of employers

1633-5017 Independent contractors

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were: (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

1633-5041 Owners of rental property

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

1633-5050 Parent and subsidiary

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(parent corporation and its wholly owned subsidiary held single E where they have interlocking officers and directors, and share use of common computer and accountant)

1633-5067 Enterprises under common management

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(notwithstanding Es were separate corporations Es were joint Es, since they had some common ownership; one E leased space from the other E; president of one E was director of other; executive vice-president of one E was president and a director of the other E)

1633-5071 Enterprises with common ownership

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**
(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(notwithstanding Es were separate corporations Es were joint Es, since they had some common ownership; one E leased space from the other E; president of one E was director of other; executive vice-president of one E was president and a director of the other E)

1633-5073 Double-breasted operations

A--1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. **250 NLRB No. 034**
(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable waiver* standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

1633-5075 Single integrated enterprise

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(four plants held single integrated E in view of common management, ownership, financial control, interchange of machinery and all garments are inspected at one plant)

Miami Foundry Corporation **252 NLRB No. 002**
(corporation which had acquired stock of iron foundry and such foundry held single integrated enterprise where foundry continued operations with management, finances, ownership, and labor relations policies resting in hands of new owner)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(notwithstanding that two Es were separate legal entities with separate bank accounts etc., they were held single E where operations of both Es were interrelated; one E was other's sole customer and existed for sole purpose of serving other; both Es had common management, supervision and elements of common ownership)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(2 Es found single integrated enterprise and/or joint E where they have same majority owner, president, dispatcher, and office manager, same business, facilities and Ees, and, most significantly, same person determining labor relations policy)

Land Equipment Inc. **248 NLRB No. 098**
(company renting construction equipment with operators to building contractors and company furnishing labor to above company held single E in view of interrelationship of operations, and common ownership, management and control of labor relations policies)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

1633-5075—Cont.

(U and nonU plants held single or joint E in view of same ownership, managers, engineers, research staff, maintenance staff, office clerical staff, head manager and director of labor policy and interchange of personnel and resources)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. **JD-261-80**

1633-7500 Employer alter ego

Hageman Underground Construction; etc. **253 NLRB No. 007**
(alter ego found where non-U company performs identical work as company which had U contract, is owned and managed by same persons, has same Ees, location and equipment, and U company went out of business after formation of non-U company and after completing jobs in progress)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(one corporation *alter ego* of other corporation where ownership, control of operating policies and labor relations of both eminated from single source)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation, proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter ego found where business continued in same form except for name; same owner-manager, finished 2 projects started by first company, purchased all equipment, rehired all Ees, and although stock held in different proportions, family ownership same)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(new company held alter ego of prior company where prior company owned physical premises which housed new company and its operations; new company organized to perform exactly the same work formerly performed by prior company; work of new company performed by identical Ees and supervision; new company operated with machinery and equipment transfered from prior company)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(sole proprietorship held *alter ego* of and single E with corporation where sole proprietorship was established by president and sole shareholder of corporation and assumed and continued corporation's operations for benefit of corporation, utilizing substantially same capital and equipment, employing same management and supervisors, and providing same services to substantially same customers as corporation)

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(successor E held not alter ego of predecessor where ownerships were not *substantially identical*, and there was no element of disguised continuation of prior enterprise; moreover, although E never disavowed contracts neither did it expressly assume them)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(international trucking corporation held alter ego of corporation owning its only voting stock, maintaining 3 to 1 majority on its board, and with power to approve all major decisions, including execution of U contract, where both corporations used same facilities, trucks and spare parts, and office and service equipment, had same overall supervision and engaged in same business in same market)

Dawson Masonry, Inc. and its alter egos, Shoals Masonry, Inc., and Charles Dawson **JD-(STL)-12-80**
(corporation which coexisted with and had substantially same ownership, controlling management, supervision and business purpose as respondent corporation held alter ego of respondent)

Dawson Masonry, Inc. and its alter egos, Shoals Masonry, Inc., and Charles Dawson **JD-(STL)-12-80**
(individual who owned, managed, and supervised two businesses which were alter ego of each other, used checks of one and paid under the name of the other found alter ego of both corporations)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(new corporation held alter ego of former E where new corporation manufactured same products, at same place, used same factor previously used by former E, and former E still exerted substantial financial control over new corporation and participated significantly, through its president, in formulation of labor policies to be pursued by new corporation)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp **JD-261-80**

Atlan Inc. **JD-890-79**
(E which acquired all physical assets of predecessor, engaged in substantially same business operations as formerly engaged in by predecessor, and employed as manager the predecessor's president and principal stockholder, held successor to and *alter ego* of predecessor)

N.L.R.B. v. Scott Printing Corporation and J&J House of Composition **612 F.2d 783 (C.A. 3)**
(where no real change in operation of composing room after sale to company formed by former Ees, and older company continued to maintain substantial degree of control over business operations finding of alter-ego proper)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(individual who was chief officer and virtually sole stockholder of two related companies held alter ego of both companies)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(individual who was chief officer and virtually sole stockholder of two related companies held alter ego of both companies)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(successor E held alter ego of prior E where successor was corporation with single shareholder who in turn was son of husband and wife owning prior E, and successor was created to avoid unionization)

1633-8700 Deliverymen and owners, drivers, lessors and lessees of trucks

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

1642 SINGLE EMPLOYER

Hageman Underground Construction; etc. **253 NLRB No. 007**
(two companies held single E where business and principle customer are same, one company no longer bids on work, transferred its Ees, and companies have common facility, ownership, management, and share equipment)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(parent corporation and its wholly owned subsidiary held single E where they have interlocking officers and directors, and share use of common computer and accountant)

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(two separate legal entities held single E where they have common owner and management, all of one company's business is derived from arrangement with the other company whereby the former performs work that the latter contracted to do, one individual sets labor relations policy for both companies, and one company uses the other's building and depends upon its clerical help)

The Arundel Corporation **252 NLRB No. 059**
(E and its subsidiary resurrected by E for sole purpose of serving as corporate instrumentality through which E could operate quarry held single E in view of various factors such as same individuals at managerial level, E's ownership of equipment used by subsidiary, ultimate control of subsidiary by E's managers, and negotiation of subsidiary's contract with U by E's officials)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(four corporations which are completely controlled by one family held single E, where the four corporation's manufacture a product in integrated fashion, whereby three corporations are in effect contractors of the fourth which is the selling arm, and the family controls labor relations of the four companies)

Miami Foundry Corporation **252 NLRB No. 002**
(corporation which had acquired stock of iron foundry and such foundry held single integrated enterprise where foundry continued operations with management, finances, ownership, and labor relations policies resting in hands of new owner)

Bacchus Wine Cooperative, Inc., and Bacchus Wine International **251 NLRB No. 207**
(E-member of agricultural cooperative and the cooperative held single E in view of interrelation of operations, common management, centralized control of labor relations, and lack of arms-length relationship, notwithstanding minimal common ownership)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(corporation which primarily manufactured scissor jacks and jack stands and corporation which made component parts for jacks for manufacturing corporation, held single E, where between two corporations was common ownership and financial control, integration of operations, centralized control of labor relations, and partial degree of common management)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

1642—Cont.

(notwithstanding that two Es were separate legal entities with separate bank accounts etc., they were held single E where operations of both Es were interrelated; one E was other's sole customer and existed for sole purpose of serving other; both Es had common management, supervision and elements of common ownership)

Yellow Taxi Company of Minneapolis, d/b/a
Suburban Yellow Taxi Company **249 NLRB No. 035**

(two taxi companies held single E where one company had no separate corporate indentity but existed solely as operating branch of other, same E officials signed U contract for both, there was common ownership, all of one company's business and personnel policies were established by officials of other company, taxis from each company's garage received orders relayed from same dispatching office, major support and repair services provided at one garage, and paychecks for both companies drawn on one bank account)

SFS Painting and Drywall, Inc.; James Seech d/b/a
J. Seech Painting and Drywall **249 NLRB No. 009**

(sole proprietorship held *alter ego* of and single E with corporation where sole proprietorship was established by president and sole shareholder of corporation and assumed and continued corporation's operations for benefit of corporation, utilizing substantially same capital and equipment, employing same management and supervisors, and providing same services to substantially same customers as corporation)

Teamsters, Local Union No. 560 (Curtin Matheson
Scientific, Inc.) **248 NLRB No. 156**

(in secondary boycott case involving picketing at one of national company's branches in support of primary dispute at another branch, Bd held E and its branches constituted single E, in view of E's policy of cross-shipping whereby other branches perform work of struck branch, and fact that E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**

(two diners held single E where they were owned by same individual who was in charge of their industrial relations, they employed same accountant, interchanged managers and waitresses, and were engaged in same business activity)

Seaport Manor, Inc. and Martin Rosenberg, Baruch
Mappa, and Emil Klein, a Partnership, d/b/a
Seaport Manor Home For Adults **248 NLRB No. 120**

(corporation founded for sole purpose of contructing and owning real property of home for enfeebled and infirm adults found single E with home, in view of common ownership and management and centralized control over labor relations)

Land Equipment Inc. **248 NLRB No. 098**

(company renting construction equipment with operators to building contractors and company furnishing labor to above company held single E in view of interrelationship of operations, and common ownership, management and control of labor relations policies)

Hood Industries, Inc., and Its Wholly Owned
Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**

(two separately identifiable business entities, held single E, where two individuals owned and operated both entities, closely supervised both operations, and determined their labor policy)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**

(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

Marlboro Trucking Co., Inc., C-J Construction Co.,
Inc., Suburban Yelow Cab, Inc. **JD-441-80**

(Bd looks to 4 principal factors in determining joint, or single E status: 1) interrelation of operations; 2) common management; 3) centralized control of labor relations, and 4) common ownership or financial control)

Marlboro Trucking Co., Inc., C-J Construction Co.,
Inc., Suburban Yelow Cab, Inc. **JD-441-80**

(3 Es held to constitute single and/or joint Es where all 3 Es operate from single facility, single office clerk bills customers and issues pay checks to Ees of 3 Es, 1 individual controls labor matters relating to all 3 Es, there is substantial flexibility in work assignment of Ees among 3 Es, all of which evidence substantial degree of common financial control and intermingling of services and assets)

W S H Construction Company, Inc., J. B. Shannon
and James A. Hurd, Equipment Rental
Company **JD-70-80**

(corporation and partnership engaged in coal stripping business and road construction business respectively, held single E where corporation's president and vice president were sole partners in partnership, both companies had common office facilities, wife of corporation's vice president performed office, bookkeeping, and clinical functions for both companies, some of same Ees worked for corporation in winter and for partnership in summer and operations of the two companies were somewhat complimentary)

Safety Electric Corporation and San Joaquin
Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**

(single E found where same individual was functioning as chief executive officer of two corporations)

N.L.R.B. v. Circle T Corporation and Meat Men
Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**

(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

N.L.R.B. v. Don Burgess Construction Corporation,
d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**

(single-E status depends on *all the circumstances of the case* and is characterized as absence of *arm's length relationship found among unintegrated companies* and is based on four criteria: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership; determination of single-E status is sustained *if it has warrant in the record and a reasonable basis in law*)

N.L.R.B. v. Don Burgess Construction Corporation,
d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**

(two Es held single E in view of interrelation of operations shown by transfer of Ees and tools to one E from other E, common accountant and address, (2) common management in view of control at policy level and same *qualifying* individual on license for both Es, (3) centralized labor relations where same person who formed nonU crew signed U contract and dealt with U, and (4) common ownership, same person owning 70% of one E, 50% of other)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**

(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that fact that subsidiaries comprised a single E necessarily established that single unit of Ees of both subsidiaries was appropriate; a single E determination does not necessarily establish that E-wide unit is appropriate)

1650 JOINT EMPLOYERS

Teamsters & Auto Truck Drivers, Local No. 85
(William Volker and Company) **253 NLRB No. 089**

(no joint E relationship exists where two companies have: separate historical development, no common management, ownership or financial control, or centralized control of labor relations; functional relationship between companies is result of contract between them)

Petroleum Electronics, Inc. and/or Cook
Enterprises, Inc. **250 NLRB No. 042**

(2 Es found single integrated enterprise and/or joint E where they have same majority owner, president, dispatcher, and office manager, same business, facilities and Ees, and, most significantly, same person determining labor relations policy)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(E operating legal services organization held not joint E with federal agency, where E is contractor who needs no clearance from agency to hire and fire Ees and establish conditions of employment, engages in collective bargaining w/o permission or consultation with agency, has no agency Ees supervising its activities, and agency's monitoring reports and fiscal audits are directed at performance of management, not labor; changes in statute and regulations since Bd last asserted jurisdiction over E did not pertain to labor relations and practices of E)

Kenner Products Division, CPG Products
Corporation, and Jeannine Robbins, d/b/a
Schnabel's Drivers For Lease **249 NLRB No. 163**

(joint-E relationship found where one E leases its drivers to other E; lessor hires, maintains fleet, handles all payroll functions, establishes and maintains written rules; lessee-E dispatches Ees, gives orders as to what runs to take, which trucks to use, proper routes to take, and controls discipline)

Kenner Products Division, CPG Products
Corporation, and Jeannine Robbins, d/b/a
Schnabel's Drivers For Lease **249 NLRB No. 163**

(two businesses not found joint-Es where businesses are separately owned, completely different types of businesses, separate E identification numbers, separate unemployment compensation accounts, separate tax accounts, one business owns trucks and employs drivers to make deliveries and other E leases drivers to truck owning company, notwithstanding close family relationship between owners of companies)

Capriccios Restaurant, Inc. **249 NLRB No. 100**

1650—Cont.

(resolution of any issue which may arise regarding nature of joint E relationship between E and another enterprise and successor E relationship between E and purchaser left to compliance stage)

California Labor Industries, Inc. **249 NLRB No. 087**
(limited instances of company's participation in management of E, set against an otherwise complete absence of participation in E's labor relations, is insufficient to establish joint-E relationship)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(company which acted as job broker and financier for E not joint E where: no common ownership, no authority or day-to-day control over Ees' work, lack of control over labor relations)

Children's Receiving Home of Sacramento **248 NLRB No. 053**
(where governmental department made precise recommendations as to number of positions and their accompanying wages and benefits at childrens' home but home was free to deviate from recommendations, governmental department was not joint E with home)

U.S. Pipe & Foundry Company and Winfrey Enterprises, Inc. **247 NLRB No. 012**
(manufacturing concern and company supplying it with drivers for its leased equipment held joint Es, notwithstanding absence of common ownership, officers, or financial interest, where manufacturer exercised effective control over drivers' working conditions and co-determined matters governing essential terms and conditions of employment of drivers used in fulfilling contract between the two companies)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. **JD-441-80**
(Bd looks to 4 principal factors in determining joint, or single E status: 1) interrelation of operations; 2) common management; 3) centralized control of labor relations, and 4) common ownership or financial control)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. **JD-441-80**
(3 Es held to constitute single and/or joint Es where all 3 Es operate from single facility, single office clerk bills customers and issues pay checks to Ees of 3 Es, 1 individual controls labor matters relating to all 3 Es, there is substantial flexibility in work assignment of Ees among 3 Es, all of which evidence substantial degree of common financial control and intermingling of services and assets)

The North American Soccer League, etc., et al. v. N.L.R.B. **613 F.2d 1379 (C.A. 5) (1980)**
(soccer league and its constituent member clubs held joint E where league exercised significant degree of control over essential aspects of the clubs' labor relations and each club granted the league authority over not only its own labor relations but also, on its behalf, authority over labor relations of other member clubs)

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(where husband and wife employed by innkeeper operating motel and restaurant assumed his restaurant lease as partnership, partnership was found not to be joint E with innkeeper since partners made all decisions on labor relations at restaurant, managed it, did not include innkeeper in partnership and had no financial interest in his motel franchise)

N.L.R.B. v. Chicago Youth Centers **616 F.2d 1028 (C.A. 7, 1980)**
(public agency has control over funding, job classification and compensation, and other terms and conditions of employment of head start program run by private agency; thus public and private agencies are joint-Es and private agency shares exemption of public agency under Sec. 2(2) of Act from Bd jurisdiction)

Miscellaneous Drivers and Helpers Union, Local No. 610 v. N.L.R.B. **624 F.2d 831 (C.A. 8, 1980)**
(funeral home operator not joint E of funeral vehicle drivers with service company that provided home with funeral vehicle services under either *Southland* test of one party's control of other party's labor relations -- which was used by Bd -- or *Pulitzer* test of interrelated functions, centralized control of labor relations and common ownership and management where funeral home was not involved in hiring, disciplining, or discharging of drivers and has never recommended such action be taken by service company and has no financial management interchange with home)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(notwithstanding Es were separate corporations Es were joint Es, since they had some common ownership; one E leased space from the other E; president of one E was director of other; executive vice-president of one E was president and a director of the other E)

The Pulitzer Publishing Company v. N.L.R.B. **618 F.2d 1275 (C.A. 8, 1980)**
(newspaper publisher held not joint E with newspaper delivery company of drivers delivering publisher's newspapers, since they have no common ownership or management, their operations are not substantially interrelated except for delivery company's contractual delivery of publisher's newspapers, and there is neither centralized control of labor relations nor substantial control of labor relations by publisher)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**
(no joint E relationship where E, under terms of cost-plus-fee contract with Army, retained *substantial control* over such bargaining subjects as hiring, discharging, wages, hours, grievance proceedings, and other terms of employment, and allowed to negotiate collective bargaining agreements, notwithstanding Army wielded *some* influence over wages, promotions, discharges, set dress code and Ees used army facilities)

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(where E transferred 3 of its Ees to another E's payroll but continued to control work schedules, assigned work and decided when additional Ees needed; joint-E relationship exists)

1667 SUCCESSOR EMPLOYERS

C.J.B. Industries **250 NLRB No. 184**
(new owner held successor where he operates business as predecessor did, using same equipment to produce same product, at same location and although he failed to retain former Ees, it was because of their U affiliation)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(resolution of any issue which may arise regarding nature of joint E relationship between E and another enterprise and successor E relationship between E and purchaser left to compliance stage)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(clothing store held successor to clothing store with which it had previously shared building and to which it had subcontracted alterations, and obligated to bargain, when it moved to separate building, established own alterations department and hired 16 of 18 individuals who had performed its alterations as subcontractor's Ees of other clothing store since no hiatus; notwithstandind contention no successorship since Ees from former unit did not constitute majority of members of appropriate storewide unit at new store, as no presumption storewide unit appropriate and alteration Ees' history of separate bargaining)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(E held successor and obligated to recognize and bargain with U where immediately after takeover all Ees in unit were Ees of predecessor E, and notwithstanding flucuation in size of unit during following 77 days, Ees of predecessor constituted majority of unit)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(Bd certification not necessary to trigger obligation to bargain of successor E)

1667-0100 Generally

Zylan Pontiac **252 NLRB No. 037**
(E who took over automobile dealership, continued operations of selling new and used cars, employed virtually same work force, found successor E and refusal to bargain with collective bargaining representative of predecess E violative)

Westwood Import Company, Inc. **251 NLRB No. 162**
(purchaser of business held successor and obligated to bargain with U representing Ees of seller where it engaged in same business at same facility and sold to substantially same customers as seller and employed all of supervisory and nonsupervisory Ees in their same job classifications; further, purchaser may not justify its failure to bargain on basis of or basis of good faith doubt of Us majority where it acquired business with full knowledge of seller's unlawful refusal to bargain)

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(E held bound for purposes of determining whether it should arbitrate whether it was bound by any provisions of its predecessor's agreements, where E for purposes of SCt's Wiley decision, under Sec. 301, was successor, since there was a *substantial continuity of identity in the business enterprises*, and a complete *continuity in the identity of the work force across the change in ownership*)

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(while mere existence of successorship clause cannot bind E to substantive terms or to arbitration absent substantial continuity of identity in business enterprises, successor who refused to assume any obligations under predecessor's agreements was bound to arbitrate since substantial continuity was present; moreover, E never refused to assume any obligations under predecessor's contract)

1667-0100—Cont.

Hospital San Miguel, Inc. **JD-287-80**
(where transfer of stock and sale of assets with lease back to E occurried, and hospital's name unchanged, same equipment used, Ees remained same, supervisory staff unchanged, corporate charter unchanged, refusal to bargain with U violative either because Respondent, a corporate entity remained same employing entity, or because E held successor)

Oil, Chemical and Atomic Workers International Union, Local 6-578 (D & M Truck Stop, Inc.) **JD-207-80**
(E who takes over business from another E becomes successor E only where bargaining unit remains unchanged and majority of Ees hired by new E are represented by U seeking recognition)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**
(E not required to reinstate office clerical Ee who was unlawfully discharged by predecessor E where E did not hire any of predecessor's office clericals and thus E was not successor with regard to predecessor's office clerical worker unit)

1667-5000 Same employing industry

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(corporation formed from stock transfer from sole-owner father to son held successorship where there was *substantial continuity of employing industry* in that new corporation continued same type of plumbing repair and remodeling work, operated business out of same location, and employed same Ees)

Stroehmann Brothers Company **252 NLRB No. 139**
(purchaser of baked goods distributorship held successor E where there was continuity in business operation, continuation of same types of product lines, departmental organization, Ee identity and job functions)

Franklin Fouts, d/b/a B & F Cartage **251 NLRB No. 068**
(purchaser of business found successor E where it continued same business in same location under virtually same conditions, using same equipment, and giving same service and with duty to employ same work force)

Cablevision Systems Development Company, A Partnership **251 NLRB NO. 176**
(cable TV company held successor E to subcontractor where it terminated subcontracting relationship, bought certain amount of subcontractors' equipment and vehilces, took over subcontractor's functions, and hired Ees of whom vast majority had been employed by subcontractor to do same work that they had done for subcontractor)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**

World Evangelism, Inc. **248 NLRB No. 117**
(network of interdenominational Evangelical Christian ministries found successor E to hostelry from which it purchased hotel-office-building complex as commercial source of revenue)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**
(E held successor and obligated to recognize and bargain with U representing Ees of predecessor where after purshase it continued same operation at same location using essentially same equipment and providing same services to substantially same individuals)

Barclay Hospital, Inc. **247 NLRB No. 144**
(E held successor in view of continuity of employing industry where E had knowledge that predesessor's Ees had selected U as their representative in Bd election, E purchased assets of predecessor and took over operation w/o any interruption of services, and retained all of predecessor's supervisory personnel as well as its employees, changes eventually implemented by successor did not render operation substantially different from that of predecessor, nor was there any contention that changes rendered certified unit inappropriate)

Atlanta Baking Company, Inc. **JD-288-80**
(purchaser-lessee of terminated bakery's inventory, plant, equipment and business found successor to seller-lessor in view of continuation of same business operations w/o hiatus, use of same facilities and work force as predecessor with same mode of payment and same customers served in same manner)

Venture Stores, Inc. **JD-81-80**
(E which built distribution center to service both its previously owned and its newly purchased stores held not successor at distribution center to E from which it purchased stores, since purchaser neither employed majority of seller's Ees there on critical date nor was it perfectly clear that it would do so in future; moreover distribution center did not involve same location, plant, equipment, methods, service or customers as seller's distribution facility and its Ees were not accretion to unit of Ees employed at stores which were purchased)

Atlan Inc. **JD-890-79**
(E which acquired all physical assets of predecessor, engaged in substantially same business operations as formerly engaged in by predecessor, and employed as manager the predecessor's president and principal stockholder, held successor to and *alter ego* of predecessor)

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**
(fact that title to equipment is now vested in bank, and that foreclosure sale intervened between predecessor's disappearance and successor's emergence pose no legal bar to Bd's finding of successorship where *employing industry* test is met)

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**
(successor relationship established notwithstanding no sale or other legal transaction between the 2 corporations as test is whether employing industry remains essentially same after transfer of ownership and, here, successor sold same line of goods, at same location, with same equipment, with high percentage of predecessor's former Ees and hiatus between predecessor's demise and successor's birth was short)

1672 BANKRUPTCY TRUSTEE OR DEBTOR-IN-POSSESSION

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

1683 STATUTORY EXCLUSIONS FROM EMPLOYER STATUS

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(contention that E operating legal services organization is statutorily exempt from Act as joint E with federal agency, rejected, where governing agency by very terms of statute which created it was removed from Sec. 2(2) exemption and, in any event, E is not joint E with agency)

1683-5000 State or political subdivision

Madison County Mental Health Center, Inc. **253 NLRB No. 030**
(jurisdiction not asserted over county mental health center which operates facilities in county hospital and house owned by private organization, where E was created by county government to fulfill statutory obligation to provide care for mentally retarded and mentally ill persons, funding is 80 percent federal and state, budget is subject to approval and labor relations are generally governed by guidelines adopted by statutory mandated boards composed of members appointed by state agency and county commissioners)

Community Health and Home Care, Inc. **251 NLRB No. 094**
(E providing and administering comprehensive public health nursing and homemaker program to 10-town area in State held agency of towns it serves where E's board of directors is accountable to and appointed by public officials in towns served by the agency and therefore it is a political subdivision and exempt from Bd's jurisdiction)

Vantage Petroleum Corp. **247 NLRB No. 202**
(jurisdiction asserted over E petroleum company's operation of state parkway gas service stations under contract with the state, since state's actual exercise of control over E's operations is not to such degree as to impair E's control over labor relations so as to render E incompetent to bargain efficaciously with a U, nor does E's performance of services for state constitute performance of services intimately related to traditional state functions warranting nonassertion of jurisdiction)

1683-7500 Persons subject to Railway Labor Act

Air Cleveland, Inc. **253 NLRB No. 059**
(ptn of Ees of E engaged in providing certain ground services to air carrier dismissed, since National Mediation Board, by request of Bd, determined that E was w/i scope of *Title II of the Railway Labor Act*)

Missouri-Illinois Central Industries, Limited **252 NLRB No. 143**
(Bd did not assert jurisdiction over E engaged in freight handling services to various common carriers engaged in interstate commerce where *National Mediation Board* found activities of E and Ees performing such activities were subject to the *Railway Labor Act*)

2400 EMPLOYEE (SEE 440-1860 AND 460-5000 for definition OF EMPLOYEE TYPES AND CATEGORIES)

2401 GENERALLY

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(individuals not deprieved of Ee status notwithstanding also employed by U as organizer)

2401-6700 Entitlement of managerial employees to protection of the Act

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**

2401-6700—Cont.

(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

2401-6750 Tests for managerial status

2401-6750-3300 Is aligned with management so as to be in potential conflict with fellow employees

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**

(Ee who held title of banquet and sales representative of E hotel but exercised no supervisory authority, held managerial Ee since his duty to monitor performance and seek its correction through supervisory officials placed him in potential conflict with fellow Ees)

2401-6750-6700 Engages in employer's policy making or exercises independent discretion in performance of duties

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

Alco-Gravure, Inc. **249 NLRB No. 137**

(Bd held process control supervisor for E engaged in rotogravure printing of newspaper supplements and advertising materials was not managerial Ee, notwithstanding his duties required use of independent judgment and discretion, where he did not exercise such discretion independent of E's established policies or make any managerial decisions as to levels of manpower required for projects)

Alco-Gravure, Inc. **249 NLRB No. 137**

(Bd held control monitors and job operators who perform much the same functions in ensuring quality of publications for E engaged in rotogravure printing of newspaper supplements and advertising materials were not supervisors, where they did not exercise real supervisory authority over Ees and did not possess any of usual indicia of supervisory authority; nor were they managerial Ees as they did not exercise judgment and discretion independent of E's established policies and were not involved in formulation, determination, and effectuation of management policies)

Permanent Label Corporation **248 NLRB No. 021**

(Ees who exercise some independent judgment based on their technical expertise held technical Ees not managerial)

Carlina Knitting Co., Inc., et al. **JD-321-80**

(although Ee was carried among payroll records of managerial Ees, he was held plant clerical and not managerial Ee, where majority of his time was spent on physical work along with *floor boys* and any orders he gave them was purely of ministerial nature)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**

(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; further, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**

(instructors herein not managerial w/i meaning of *NLRB v. Yeshiva University* but simply Ees, where they have no input into policy decisions and do not engage in management level decision making, and E does not resemble nonprofit *mature* university in that case)

2401-6800 Confidential employee

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**

(individual held not confidential Ee notwithstanding she maintained personnel files, performed payroll functions, which involved confidential personnel information such as wage rates)

Stroock & Stroock & Lavan **253 NLRB No. 052**

(those who act in confidential capacity involving their E's labor relations, not those of another E)

Stroock & Stroock & Lavan **253 NLRB No. 052**

(executive committee secretaries not confidential Ees where when executive committee does consider labor policies or decisions for firm no clerical Ees are present)

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**

(Bd held law firm's clerical and support staff not *confidential* workers under *Bell Aerospace* and the *Taft-Hartley* legislative history, adhering to its traditional restrictive definition of confidential workers as individuals acting in confidential capacity to those Ees formulating, determining and effectuating management's labor relations policies for their own E)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(office clerical who served as secretary to credit manager held not confidential Ee since routine secretarial assistance to official who formulates and effectuates labor relations policies is not sufficient to warrant exclusion from unit as confidential Ee)

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) **250 NLRB No. 065**

(Ees who primarily do maintenance-type work, including caring for lawn and parking lot, cleaning premises, making deliveries, and filing, held, contrary to E labor law firm's contention, not confidential Ees, since Ees' activities can hardly be considered as assisting and acting in confidential capacity to E in connection with labor relations)

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) **250 NLRB No. 065**

(Ees of labor law firm, not confidential Ees even though they might have access to confidential information relating to labor relations of their E's clients; it is implicit in rationale for finding confidential status that such persons work in confidential capacity with someone who formulates, determines and effectuates labor relations policies for their own E, not some other E)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

Reymond Baking co. **249 NLRB No. 156**

(challenge to ballot of *receptionist/typist/floater* sustained since such Ee acts in confidential capacity to person involved in formulating, determining and effectuating E's labor relations and is therefore confidential Ee)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**

(Ee found not to be confidential Ee and included in unit where she was hired as secretary, did general typing and only small amount of personnel work, including voter eligibility list)

Union College **247 NLRB No. 069**

(secretaries to divisional deans held confidential Ees where they have access to grievance files and E's notes relating to grievances and help with work in connection with labor relations functions of divisional deans)

Hendricks County Rural Electric Membership Corporation **247 NLRB No. 068**

(on ct remand, Bd found under standard erected by ct that Ee was not confidential Ee where she not only did not work in confidential capacity in respect to labor relations matters, but did not perform confidential duties in connection with nonlabor relations or personnel areas)

2401-8700 Foreign nationals or illegal aliens

Actors' Equity Association **247 NLRB No. 172**

(contention that Bd should decline jurisdiction because alleged ULPs affected only a few non-resident aliens, rejected; Bd enforces Act as to all Ees, including aliens, unless regulation of practice involved is properly left to some other sovereign authority)

2414 INDICIA OF EMPLOYEE STATUS

2414-0100 Generally

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. **249 NLRB No. 143**

(newspaper carriers found Ees where E has reserved right to control result achieved and also means used in attaining results; factors considered are substantial control over carriers by district managers, carriers have no proprietary interest, insulated from most economic losses, limited opportunity to significantly increase income)

Mitchell Bros. Truck Lines **249 NLRB No. 051**

(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

2414-1100 Continuity and regularity of work

Jurisearch, Inc. **250 NLRB No. 091**

(law researcher held Ee rather than independent contractor where he was to work on regular basis so long as his work was satisfactory)

Local 777, Democratic Union Organizing Committee N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

177-STATUTORY DEFINITIONS

2414-2200 Control and supervision of methods, terms, and conditions of work

Franklin Fouts, d/b/a B & F Cartage **251 NLRB No. 068**
(Ees who *spotted* trailor trucks by backing trailor into dock or pulling it away and parking it found not to be independent contractors since there was no exercise of entrepreneurial skills)

Jurisearch, Inc. **250 NLRB No. 091**
(where E controlled part-time law school graduate's research technique and method of writing of legal memoranda, graduate held Ee rather than independent contractor)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

Exhibitors Film Delivery & Service, Inc. **247 NLRB No. 066**
(contract delivery drivers for common carrier who drive their own trucks held Ees rather than independent contractors under *right of control* test where they perform functions of E's business rather than of independent business, have permanent working arrangement with E, do business in E's name and sell E's services, work under contracts promulgated and unilaterally changed by E, account to E for funds, have no properitary interest in E's routes, take no risk but are limited to E's routes and E's prices for their services)

N.L.R.B. v. Fugazy Continental Corporation **603 F.2d 214(T) (C.A. 2, 1979)**
(drivers held Ees rather than independent contractors, since, notwithstanding their franchises, they lacked freedom of operation where E set fares and percentage thereof on which their incomes were based, dictated their dress, conduct and types of vehicle, disciplined them for violations, restricted them so that outside business was less profitable, and by its policies rendered their franchises of little continuing value; E was distinguished from driver-formed association which was administrative creature providing facilities and opportunities for a price)

City Cab Company of Orlando, Inc., et al. v. N.L.R.B. **628 F.2d 261 (C.A.D.C. 1980)**
(ct affirmed Bd determination that taxi drivers were Ees under Act and not independent contractors where E effectively retained control over manner in which its drivers perform their duties)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(lessee-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2414-3300 Right of control, not exercise thereof, is determinative

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**

2414-4400 Control of earning potential by person ordering or directing work

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where E authorized fixed number of hours per assignment, paid hourly rate and set deadlines so that researcher could not increase his income by entrepreneurship and had no capital investment or risk of loss)

N.L.R.B. v. Fugazy Continental Corporation **603 F.2d 214(T) (C.A. 2, 1979)**
(drivers held Ees rather than independent contractors, since, notwithstanding their franchises, they lacked freedom of operation where E set fares and percentage thereof on which their incomes were based, dictated their dress, conduct and types of vehicle, disciplined them for violations, restricted them so that outside business was less profitable, and by its policies rendered their franchises of little continuing value; E was distinguished from driver-formed association which was administrative creature providing facilities and opportunities for a price)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2414-6600 Compensation

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

2414-7700 Pension and retirement plans

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

2414-8800 Contract determination

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where E set terms and conditions of employment unilaterally and had E-Ee relationship rather than contractual one with worker)

2428 CONTINUATION OR LOSS OF EMPLOYEE STATUS

2428-0100 Generally

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

2428-7500 Individuals whose work has ceased as result of nondiscriminatory interruption or termination of employment

Schlegel Oklahoma, Inc. **250 NLRB No. 012**
(discharged Ee found statutory Ee for purposes of finding threat against him and other Ee unlawful)

Valley Rock Products, Inc. **JD-(SF)-285-79**
(individual on leave of absence held Ee and ballot ordered counted, since no evidence employment relationship severed by positive action, where when applying for leave of absence and at time leave granted individual stated verbally and in writing he intended to return to work after leave, and in letter granting leave E asked to be advised of approximate return date; moreover, individual was never removed from E's rolls and continued to work for E during leave when E was short-handed)

2456 STRIKERS

2456-0100 Generally

Bethlehem Steel Corporation **252 NLRB No. 138**
(where Ees engaged in unprotected work stoppage in violation of no strike provision of contract, Ee who left work for different reason but later joined

2456-0100—Cont.

strikers in their activity found striker also) >08512177245601000000300800930

Bethlehem Steel Corporation **252 NLRB No. 138**
(where Ees engaged in unprotected work stoppage in violation of no strike provision of contract, Ee who left work for different reason but later joined strikers i

2456-5000 ULP strikers

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(where unlawful discharge was cause of Ees' picketing)

2456-7500 Sympathy strikers

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**
(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

2456-8300 Replaced economic strikers

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(entitled to reinstatement as positions become available)

2461 Probationary employees

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**
(entitled to same protections and rights under Act as other Ees)

2484 STATUTORY EXCLUSIONS FROM EMPLOYEE STATUS

2484-0100 Generally

2484-0150 Teachers in church-operated schools

N.L.R.B. v. Lay Faculty Association, Local 1261 **623 F.2d 818 (C.A. 2, 1980)**
(ct rejected Bd's claim to jurisdiction over Catholic high school notwithstanding title and responsibility for operating school vested in lay board, since it is suffusion of religion into curriculum and mandate of faculty to infuse students with religious creed which create conflict with Religion Clauses, not vesting of title, and Bd could not avoid becoming entangled with religious mission of school in setting of mandatory collective bargaining)

2484-1200 Any individual employed as an 'agricultural laborer'

2484-1201 Generally

2484-1201-2500 FLSA Sec. 3(f) sole criterion for defining 'agricultural laborer'

Drummond Coal Company **249 NLRB No. 139**
(under Sec. 3(f) of FLSA that Bd employs in determining whether workers are *Ees* or *agricultural laborers* workers engaged in revegetation of mined areas held agricultural laborers notwithstanding products grown on revegetated land is not sold and revegetation mandated by Federal and State statutes, since workers in preparing seedbeds are engaged in cultivation and tillage of soil under Sec. 3(f))

C & D Foods, Inc. v. N.L.R.B. **626 F.2d 578 (C.A. 7, 1980)**
(Ees who raise ducklings until ready for processing on five *grow-out* farms which were separate from E's main complex exempt from unit as agricultural Ees as defined by FLSA Sec. 3(f); moreover, Ees on remaining farm who raised ducklings and also performed *substantial and regular amount of work* on ducks raised by local growers under contract with E not exempt as agricultural Ees, but excluded on basis they did not share sufficient community of interests with unit Ees)

2484-1201-5000 Discretion of Board in considering mixed functions agricultural

C & D Foods, Inc. v. N.L.R.B. **626 F.2d 578 (C.A. 7, 1980)**
(Ees who raise ducklings until ready for processing on five *grow-out* farms which were separate from E's main complex exempt from unit as agricultural Ees as defined by FLSA Sec. 3(f); moreover, Ees on remaining farm who raised ducklings and also performed *substantial and regular amount of work* on ducks raised by local growers under contract with E not exempt as agricultural Ees, but excluded on basis they did not share sufficient community of interests with unit Ees)

2484-1225 Tests

2484-1225-1200 Totality of situation determines applicability of secondary definition of agriculture

Dairy Fresh Products Co., A Division of Cal-Maine & Foods, Inc., d/b/a Stahmann Egg Farms **251 NLRB No. 163**
(farm workers employed in egg processing held exempt as agricultural Ees where their work falls w/i FLSA definition of *preparation for market* of indicated commodities and meets secondary test for agriculture)

Dairy Fresh Products Co., A Division of Cal-Maine & Foods, Inc., d/b/a Stahmann Egg Farms **251 NLRB No. 163**
(farm workers employed in feed mill operation held exempt as agricultural Ees, where their work falls w/i FLSA definition of performance *incident to or in conjunction with* exempt farming operations to extent feed mill is utilized for E's own farm operations and thus meets secondary test for agriculture; feed provided to State University at cost in conjunction with research project does not convert feed mill operations into nonagricultural commercial endeavor)

2484-1225-8700 Poultry raiser's farmer status

Dairy Fresh Products Co., A Division of Cal-Maine & Foods, Inc., d/b/a Stahmann Egg Farms **251 NLRB No. 163**
(farm workers employed in poultry raising and egg production operations, exempt as agricultural workers where their work comes w/i FLSA primary definition of agriculture; poultry raising is specifically included in definition, and eggs are farm commodities)

C & D Foods, Inc. v. N.L.R.B. **626 F.2d 578 (C.A. 7, 1980)**
(Ees who raise ducklings until ready for processing on five *grow-out* farms which were separate from E's main complex exempt from unit as agricultural Ees as defined by FLSA Sec. 3(f); moreover, Ees on remaining farm who raised ducklings and also performed *substantial and regular amount of work* on ducks raised by local growers under contract with E not exempt as agricultural Ees, but excluded on basis they did not share sufficient community of interests with unit Ees)

2484-1250 Activities exempt as agricultural

2484-1250-1200 Landscaping and raising trees

Drummond Coal Company **249 NLRB No. 139**
(under Sec. 3(f) of FLSA that Bd employs in determining whether workers are *Ees* or *agricultural laborers* workers engaged in revegetation of mined areas held agricultural laborers notwithstanding products grown on revegetated land is not sold and revegetation mandated by Federal and State statutes, since workers in preparing seedbeds are engaged in cultivation and tillage of soil under Sec. 3(f))

2484-1250-3300 Egg production and processing

Dairy Fresh Products Co., A Division of Cal-Maine & Foods, Inc., d/b/a Stahmann Egg Farms **251 NLRB No. 163**
(farm workers employed in poultry raising and egg production operations, exempt as agricultural workers where their work comes w/i FLSA primary definition of agriculture; poultry raising is specifically included in definition, and eggs are farm commodities)

2484-5000 'Independent contractor'

2484-5033 Indicia of status

Kentucky Prince Coal Corporation **253 NLRB No. 070**
(coal haulers found independent contractors and excluded from unit where trucks driven by owners and owner's Ees, E pays owner who is responsible for all maintenance, E carries no workmen's compensation, unemployment compensation, pays no social security or withhold taxes on drivers behalf; E provides no benefits, may not substitute drivers between trucks although owners do w/o E's knowledge, and haulers not subject to E's work rules)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(owner operators of dump trucks held independent contractors where they were paid by hour, mileage or tonnage rates, responsible for entire cost of their enterprises, select jobs want to work on and may hire drivers or subcontract work)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

2484-5033-0100 Generally

Franklin Fouts, d/b/a B & F Cartage **251 NLRB No. 068**
(Ees who *spotted* trailor trucks by backing trailor into dock or pulling it away and parking it found not to be independent contractors since there was no exercise of entrepreneurial skills)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and sublessees Ees rather than independent contractors, Bd held right to unilaterally promulgate and change terms and conditions of employment is itself evidence of right to control manner and means in which services are to be provided as well as absence of arm's-length relationship between two contracting parties)

2484-5033-0100—Cont.

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and subleasees Ees rather than independent contractors, Bd held E's exercise of discipline over drivers clearly established E's right to control them)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and subleasees Ees rather than independent contractors, Bd held control exercised by E over drivers' entrepreneurial opportunities indicated an E-Ee relationship and not an arm's length relationship between two business entities)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and subleasees Ees rather than independent contractors, Bd held control exercised by E over drivers' subleasing and sale of their taxicabs indicated E-Ee relationship)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(in finding taxicab driver-owners and sublessees at airport Ees rather than independent contractors, Bd held E's contract with FAA evidenced E-Ee relationship where FAA contract explicitly prohibited E from assigning its exclusive right to pick up passengers at airport, number of drivers testified E never told them their relationship was based on franchise or that they were independent contractors, and E required drivers to comply only with portions of contract that it deemed should be enforced)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(Ee who instructs other Ees in welding held regular part-time Ee not independent contractor where he had no authority at all and was paid on hourly basis)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

2484-5033-0133 Amount of control reserved by person for whom work is done

Tarheel Coals, Inc.; Newcon Coals, Inc.; Sigmond Enterprises, A Partnership; Bass Trucking a/k/a Bass Transit, Inc. **253 NLRB No. 071**
(case dismissed where Bd held truck owners were independent contractors since Es retained no control over right to substitute drivers, unilaterally change or impose working conditions, discipline truck owners or drivers, or control performance of drivers or truck owners away from Es' premises)

Liquid Transporters, Inc. **250 NLRB No. 163**
(owner-operators and their drivers held Ees of interstate common carrier where E maintained single seniority list for *all* drivers, *all* drivers were dispatched by E's dispatcher, *all* drivers were subject to same discipline for failure to comply with E's dispatch procedures and for violation of government regulations and company rules, single grievance committee was available to *all* drivers, and E insured equipment to *all* drivers in conduct of E's business)

Liquid Transporters, Inc. **250 NLRB No. 163**
(permanent sleeper teams who lease their equipment to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as, other drivers for owneroperators who are Ees of E)

Jurisearch, Inc. **250 NLRB No. 091**
(where E controlled part-time law school graduate's research technique and method of writing of legal memoranda, graduate held Ee rather than independent contractor)

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where E authorized fixed number of hours per assignment, paid hourly rate and set deadlines so that researcher could not increase his income by entrepreneurship and had no capital investment or risk of loss)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

Amber Delivery Service, Inc. **250 NLRB No. 016**

Georgia Pacific Corporation **249 NLRB No. 181**
(contrary to *Georgia Pacific Corp.*, 225 NLRB 866 (1976), Bd found truckdrivers to be Ees of *contract carriers* (independent contractors) and not E, since by terms of new agreements between E and contract carriers: (1) carriers and their drivers, rather than E, determined route to use; (2) carriers are no longer required to coordinate their services solely with E's operations; (3) E no longer retained right to subject carriers to all *instructions* concerning time and manner of performing their services; and (4) E did not have right to reject vehicles or drivers which failed to meet E's safety standards)

Bellacicco & Sons, Inc. **249 NLRB No. 129**

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**
(owner-operators and non-owner drivers of leased trucks held Ees of leasee E and not independent contractors or Ees of independent contractors since E maintained extensive control over owner-operators as was demonstrated by E's exclusive possession, control, and use of said leased trucks, E's unilateral determination of owner-operator compensation, display of E's insignia and ICC certification on trucks, and, among other factors, overall effect of degree of control over equipment and personnel required by State and Federal regulations of motor carriers)

Exhibitors Film Delivery & Service, Inc. **247 NLRB No. 066**
(contract delivery drivers for common carrier who drive their own trucks held Ees rather than independent contractors under *right of control* test where they perform functions of E's business rather than of independent business, have permanent working arrangement with E, do business in E's name and sell E's services, work under contracts promulgated and unilaterally changed by E, account to E for funds, have no properitary interest in E's routes, take no risk but are limited to E's routes and E's prices for their services)

City Cab Company of Orlando, Inc., et al. v. N.L.R.B. **628 F.2d 261 (C.A.D.C. 1980)**
(ct affirmed Bd determination that taxi drivers were Ees under Act and not independent contractors where E effectively retained control over manner in which its drivers perform their duties)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(lessee-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2484-5067 Specific operations

2484-5067-2000 Contract drivers

Liquid Transporters, Inc. **250 NLRB No. 163**
(owner-operators and their drivers held Ees of interstate common carrier where E maintained single seniority list for *all* drivers, *all* drivers were dispatched by E's dispatcher, *all* drivers were subject to same discipline for failure to comply with E's dispatch procedures and for violation of government regulations and company rules, single grievance committee was available to *all* drivers, and E insured equipment to *all* drivers in conduct of E's business)

Liquid Transporters, Inc. **250 NLRB No. 163**
(permanent sleeper teams who lease their equipment to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as, other drivers for owneroperators who are Ees of E)

2484-5067-2000—Cont.

Georgia Pacific Corporation **249 NLRB No. 181**
(contrary to *Georgia Pacific Corp.*, 225 NLRB 866 (1976), Bd found truck-drivers to be Ees of *contract carriers* (independent contractors) and not E, since by terms of new agreements between E and contract carriers: (1) carriers and their drivers, rather than E, determined route to use; (2) carriers are no longer required to coordinate their services solely with E's operations; (3) E no longer retained right to subject carriers to all *instructions* concerning time and manner of performing their services; and (4) E did not have right to reject vehicles or drivers which failed to meet E's safety standards)

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(owner operators of dump trucks held independent contractors where they were paid by hour, mileage or tonnage rates, responsible for entire cost of their enterprises, select jobs want to work on and may hire drivers or subcontract work)

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**
(owner-operators and non-owner drivers of leased trucks held Ees of leasee E and not independent contractors or Ees of independent contractors since E maintained extensive control over owner-operators as was demonstrated by E's exclusive possession, control, and use of said leased trucks, E's unilateral determination of owner-operator compensation, display of E's insignia and ICC certification on trucks, and, among other factors, overall effect of degree of control over equipment and personnel required by State and Federal regulations of motor carriers)

Exhibitors Film Delivery & Service, Inc. **247 NLRB No. 066**
(contract delivery drivers for common carrier who drive their own trucks held Ees rather than independent contractors under *right of control* test where they perform functions of E's business rather than of independent business, have permanent working arrangement with E, do business in E's name and sell E's services, work under contracts promulgated and unilaterally changed by E, account to E for funds, have no properitary interest in E's routes, take no risk but are limited to E's routes and E's prices for their services)

2484-5067-3500 Delivery drivers

Amber Delivery Service, Inc. **250 NLRB No. 016**
(owner operators held Ees and not independent contractors where E exercised such daily contral as: work load, routes taken, drivers having no proprietary interest in routes, and E's warehouse Ees assisting in loading and unloading; moreover, fact that E does not withhold taxes, provide workmen's compensation, drivers receive no paid holidays, pay cost of own repairs and fuel and contract sets forth that drivers are not Ees is not controlling)

2484-5067-4000 Driver salesmen

Charmer Industries, Inc. **250 NLRB No. 031**
(salesmen working for wholesalers held statutory Ees and not in business for themselves, where U contract lists number of causes for their discharge, Es assign, supervise, and take away from salesmen accounts they are to service, and also establish quotas against which their performance is evaluated)

Bellacicco & Sons, Inc. **249 NLRB No. 129**
(drivers who purchased exclusive right from producer of bread to distribute its product in a certain area and had right to sell route, held independent contractors, where responsible generally for insuring and maintaining trucks, may employ substitute driver w/o company's approval, distribute other products, set prices for cash customers, set own hours, did not attend company meetings or have company manuals issued to them; further there was no withholding of taxes or social security nor unemployment or workman's compensation contributions made on their behalf and company reimbursed by drivers for his share of medical insurance)

2484-5067-6000 Taxicab drivers

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**
(taxicab drivers who leased cabs from E found Ees rather than independent contractors where areas of control over lessee drivers included collection of alleged driver overcharges, use of flat fare rates, requirements that lessees clean their cabs, restrictions on freedom of lessees to refuse to accept assigned runs w/o penalty, restrictions on use of radio, mandate by various laws, enforced by E, violation of which could result in refusal of leases, E's retention of right to end leasing relationship, and E's precluding lessees from allowing others to drive during their lease terms)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(taxicab driver-owners and sublessees at airport held Ees rather than independent contractors, notwithstanding factors indicating independent contractor status, in view of 7 enumerated factors such as E's retention of unilateral control over drivers' revenue by control of fare structure, performance of drivers' services in E's name, E's absolute control over determination of satisfactory performance, and managerial assistance and control at E's taxistand)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(lessee-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2484-5067-8000 Newspaper carriers

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. **249 NLRB No. 143**
(newspaper carriers found Ees where E has reserved right to control result achieved and also means used in attaining results; factors considered are: substantial control over carriers by district managers, carriers have no proprietary interest, insulated from most economic losses, limited opportunity to significantly increase income)

2484-5067-8500 Day care centers

Rosemount Center **248 NLRB No. 163**
(home mothers employed by child day care facility, who provide day care services in their homes, held Ees, rather than independent contractors, in view of E's control over their work conditions and environment)

2484-5067-9400 Musicians

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

3200 'REPRESENTATIVE'

3900 'LABOR ORGANIZATION'

3925 PREREQUISITES

3925-4000 Purpose of dealing with employers with regard to employee working conditions

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(Building and Construction Trades Council held labor organization, notwithstanding Council did not meet statutory requirement that Ees participate in *labor organization*, did not engage in collective bargaining, nor existed for purpose of dealing with Es concerning grievances labor disputes, wages, hours of conditions of employment; where it had objectives of safeguarding jurisdictional rights of Ees, protecting their wages, hours and working conditions; further, an organization need not engage in collective bargaining to qualify as labor organization)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(committee of representatives elected by Ees from three of E's departments to present their grievances to E's representatives held labor organization)

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(in-plant Ee committee held labor organization, notwithstanding that only one grievance pertaining to vacations was actually adjusted at committee meetings with E, where committee had purpose of dealing with E who had established committee for ostensible purpose of securing adjustments in terms and conditions of employment)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(FASH Local 100 found to be labor organization where it exists in part to represent Ees with regard to employment conditions, not withstanding it has concurent purpose of attempting to reform Teamsters)

South Nassau Communities Hospital **247 NLRB No. 067**
(*Nursing Advisory Committee* participated in by Ees and which dealt with E concerning Ees' grievances and conditions of employment held to have been *labor organization* notwithstanding Committee was also concerned with hospital administration and professional matters not related to wages, hours and working conditions)

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**
(unaffiliated Ee association consisting of 10-member grievance committee with elected spokesperson but no officers, constitution, by-laws, or membership rolls, which was formed for collective bargaining purposes and has met and bargained with E concerning Ees' working conditions since its formation and which has notified Ees of and held meetings that they attended where minutes were kept, held labor organization)

3925-8000 Collective bargaining not essential

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(Building and Construction Trades Council held labor organization, notwithstanding Council did not meet statutory requirement that Ees participate in *labor organization*, did not engage in collective bargaining, nor existed for purpose of dealing with Es concerning grievances labor disputes, wages, hours of conditions of employment; where it had objectives of safeguarding jurisdictional rights of Ees, protecting their wages, hours and working conditions; further, an organization need not engage in collective bargaining to qualify as labor organization)

3950 TYPES OF LABOR ORGANIZATIONS

3950-2700 Employee committees, medical interns' associations, etc.

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(committee of representatives elected by Ees from three of E's departments to present their grievances to E's representatives held labor organization)

South Nassau Communities Hospital **247 NLRB No. 067**
(*Nursing Advisory Committee* participated in by Ees and which dealt with E concerning Ees' grievances and conditions of employment held to have been *labor organization* notwithstanding Committee was also concerned with hospital administration and professional matters not related to wages, hours and working conditions)

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**
(unaffiliated Ee association consisting of 10-member grievance committee with elected spokesperson but no officers, constitution, by-laws, or membership rolls, which was formed for collective bargaining purposes and has met and bargained with E concerning Ees' working conditions since its formation and which has notified Ees of and held meetings that they attended where minutes were kept, held labor organization)

3950-4500 Organizing committees, central labor councils, etc.

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(Building and Construction Trades Council held labor organization, notwithstanding Council did not meet statutory requirement that Ees participate in *labor organization*, did not engage in collective bargaining, nor existed for purpose of dealing with Es concerning grievances labor disputes, wages, hours of conditions of employment; where it had objectives of safeguarding jurisdictional rights of Ees, protecting their wages, hours and working conditions; further, an organization need not engage in collective bargaining to qualify as labor organization)

3950-7700 Organizations subject to influence, domination or control by supervisors

Abington Memorial Hospital **250 NLRB No. 098**
(state-wide nurses' association in which Ees participate and which exists, at least in part, for purpose of representing its members in collective bargaining held labor organization, even though supervisors hold leadership positions in organization)

N.T. Enloe Memorial Hospital **250 NLRB No. 078**
(in unit of Ees represented by association which admitted supervisors to membership, there is no conflict of interest which would disqualify association as bargaining representative where one unit member is supervisor but is not engaged in collective bargaining)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(Nurses' Association held labor organization not disqualified to represent E's Ees, even assuming that competitive relationships existed between E and other area hospitals, where there was no showing of conflict of interest between influence w/i Association of supervisor-members employed by competing hospitals and Association's capacity to represent E's Ees; presence alone of third-party supervisors in Association is not sufficient, since Bd will not assume any *inherent* conflict of interest between supervisors and Ees in bargaining process; see also Oak Park Community Hospital, 249 NLRB No. 120)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(Nurses' Assoc. held labor organization not disqualified to represent E's Ees, notwithstanding E's contention that specified supervisors, officials of Assoc. and employed by other hospitals, could influence to an impermissible degree bargaining between E and Assoc., since all bargaining responsibilities of Assoc. reside w/i Assoc.'s commission all of whose members are nonsupervisory nurses, bargaining on local level is conducted by elected Ee bargaining committee, and there was no reasonable likelihood that specified supervisors could meaningfully affect bargaining between E and Assoc.)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(Nurses' Association held labor organization not disqualified to represent E's Ees; Ees' interest in R is not affected adversely by Association's rendering of personal employment-related assistance to one of their supervisor-members inasmuch as members of Accoaition's bargaining commission exercise individual discretion both as to whether to assist supervisor and as to form such assistance should take, and E is able independently to determine whether supervisor so indebted to U should be assigned to bargain on its behalf with such U; see also *Oak Park Community Hospital*, 249 NLRB No. 120)

Sierra Vista Hospital, Inc. **249 NLRB No. 066**
(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflict of interest under *Sierra Vista*, 241 NLRB No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

Exeter Hospital **248 NLRB No. 056**
(nurses association which included supervisors in leadership positions found to be unqualified to represent Ees since there was clear and present danger of conflict of interest which would interfere with collective bargaining process)

Healdsburg General Hospital **247 NLRB No. 030**
(nurses association held labor organization and not disqualified from acting as Ee representative on ground association is subject to control of supervisors who are permitted to be members, since (1) there was no evidence E's supervisors belonged to association, and Bd will not resort to speculation about posibility, as claimed by E, that supervisors might join at some future time, and (2) E failed to meet *heavy burden* of showing *direct* conflict of interest because of possible relation between E and Es of supervisors participating in bargaining process)

Healdsburg General Hospital **247 NLRB No. 030**
(nurses association held labor organization and not disqualified from acting as Ee representative on ground that association is subject to control by supervisors who are permitted to be members; even assuming that association is influenced by supervisors, that association represents *all* nurses including supervisors, and that such representation is costly and controversial, Bd held E failed to establish that any of these factors create conflict of interest sufficient to prevent association from acting as Ee representative)

Sidney Farber Cancer Institute **247 NLRB No. 001**

3975 SUCCESSOR LABOR ORGANIZATIONS

Wellman Industries, Inc. **248 NLRB No. 029**
(U consisting of two merged labor organizations found successor to one of merged Us as continuation of old U under new name with continuity of representation and no change in operations found successor)

3987 EFFECT OF DISAFFILIATION, AFFILIATION, OR MERGE

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(election purporting to affiliate Ee committee and its constituent Ees with international U held ineffictive and void where voting violated all principles of fair election inasmuch as there was no voting list or record kept of who

3987—Cont.

received ballots, and who voted, and there was no assurance that ballots represented votes of legitimate voters; and on day following voting, after ballots had been counted, Ee, who was most active in promoting affiliation, handed in two ballots purporting to be vote of other Ees, who apparently voted in favor of affiliation and broke election's tie vote)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(election purporting to affiliate Ee committee with international U held ineffective and void since it was conducted in violation of minimal standards of democratic procedure or due process, where no notice was given Ees, advising them of meeting for conducting vote; no opportunity was allowed for discussion among Ees on merits of affiliation; majority of Ees had been informed that they were not voting on affiliation with international but on whether they wanted to hear about it; and there was lack of safeguards against rigged or otherwise unfair election)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(valid affiliation election held not to create new labor organization nor does it result in dissolution of existing labor organization, and agreement between affiliating U and E remains effective until its stated expiration date; in case of void affiliation election, it is even more obvious that such election and any derivative actions do not dissolve pre-existing labor organization or its contract with E)

Wellman Industries, Inc. **248 NLRB No. 029**
(U consisting of two merged labor organizations found successor to one of merged Us as continuation of old U under new name with continuity of representation and no change in operations found successor)

4700 'COMMERCE'

5500 'AFFECTING COMMERCE'

Actors' Equity Association **247 NLRB No. 172**
(contention that Bd should decline jurisdiction because alleged ULPs affecting only a few non-resident aliens had no significant effect on commerce, rejected; in exercising its jurisdiction, Bd looks to impact of E's operations on commerce and does not attempt to measure impact of specific ULPs alleged, unless they are de minimis)

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**
(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

6200 'UNFAIR LABOR PRACTICE'

7000 'LABOR DISPUTE'

7067 STRIKE

7067-3300 Economic strike

W. G. Best Homes Corporation **253 NLRB No. 123**
(strike held economic strike where precipitated by inability to reach agreement on economic matters in bargaining agreement and was not converted into ULP strike by E's failure to bargain regarding its decision to subcontract where U never requested bargaining on issue)

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(economic strike not converted to ULP strike where E's conduct subsequent to strike had no causal effect on continuation of strike)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(Bd disavowed ALJ's statement that U's objective during strike, as an alternative to obtaining more money, is to put E out of business if he does not yield)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(while agreeing with ALJ that strike was economic at its inception, Bd disavowed his characterization of GC's withdrawal of one 8(a)(5) complaint allegation to the effect that as of date strike started, E unlawfully paid its strike replacements higher wages than it had offered during negotiations as a *legal admission* that strike was an economic one)

Redlands Christian Migrant Association **250 NLRB No. 027**
(strike over alleged unfavorable working conditions)

Excavation-Construction, Inc. **248 NLRB No. 081**
(discharge of Ees who participated in 1-day work stoppage in support of U's bargaining position violated Act as this is strike and not *intermittent work stoppage* which would be unprotected)

7067-3350 Conversion to ULP strike

W. G. Best Homes Corporation **253 NLRB No. 123**
(strike held economic strike where precipitated by inability to reach agreement on economic matters in bargaining agreement and was not converted into ULP strike by E's failure to bargain regarding its decision to subcontract where U never requested bargaining on issue)

Associated Grocers **253 NLRB No. 005**
(no conversion of economic strike to ULP strike where ULPs committed by E did not prolong strike)

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(after E threatened to discharge economic strikers)

Inta-Roto, Inc. **252 NLRB No. 111**
(where E terminated contract in retaliation for strike)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(E's unlawful refusal to bargain with U for 5-month period extended strike thus turning economic strike into ULP strike)

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(economic strike converted to ULP strike when E refused to bargain in good faith by insistence on contract termination date coincidental with certification year)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(although Ees' strike in support of U demand that their lawfully discharged co-Ees be returned to work was economic strike, it was converted to ULP strike by E's unlawful discharge of economic strikers for not abandoning strike)

Harding Glass Industries **248 NLRB No. 091**
(unlawful withdrawal of member from E-association during negotiations converted economic strike to ULP strike)

7067-6700 Unfair labor practice strike

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(strike held ULP strike since caused and prolonged by E's bad faith bargaining where Ees voted to strike after being informed E had been bargaining in bad faith and that U intended to file charges with NLRB, notwithstanding that at time of strike parties were apart only on two issues)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(strike for recognition of one U as representative of strikers found ULP strike)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(picketing which was precipitated by ULPs not ULP strike since Ees did not withhold services)

Excavation-Construction, Inc. **248 NLRB No. 081**
(strike caused in part by E's institution of unilateral change in terms of employment)

B. N. Beard Company **248 NLRB No. 016**
(strike caused by E's failure to make payments to welfare and pension funds required under contracts with Us held ULP strike; failure to comply with notice and strike deferral provisions of Sec. 8(d) held not to make strike illegal since Sec. 8(d) is not applicable to ULP strike)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(ULP strike where caused and prolonged by E's unlawful threats and discharges)

Circle X Corporation **JD-(SF)-222-80**
(strike caused by E's refusal to meet with full U negotiating committee, ULP strike)

Andersen Sand & Gravel Company **JD-655-80**
(held ULP strike where Ees of 1 U struck to protest hiring of Ees represented by different U who were not subject of contract of first U and E's unilaterally contracting with outside U for work claimed by first U, notwithstanding no-strike clause and U representative attempt to get Ees back to work and statement that walkout violated contract)

Mather Federal Credit Union **JD-(SF)-8-80**
(fact that Ees who protested E's ULPs also expected to put economic pressure upon E and thereby obtain acceptable contract held not to lessen their rights as ULP strikers)

7067-6750 Causal relation of ULP must be shown

Climate Control Corporation **251 NLRB No. 102**

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(strike in protest of E's unlawful action in unilaterally changing transfer request system affecting voluntary demotion, held ULP strike from its inception)

Burns Motor Freight, Inc. **250 NLRB No. 045**
(strike held ULP strike notwithstanding it commerced several months after ULPs, where ULPs were unremedied at time of strike and E's refusal to bargain continued)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

7067-6750—Cont.

Amber Delivery Service, Inc. **250 NLRB No. 016**
(strike called over lawful Ee discharges not ULP strike notwithstanding E committed other ULPs at same time as no causal relationship existed between strike and ULPs)

Cable Vision, Inc. **249 NLRB No. 062**
(where picket signs used during strike noted there was ULP charge and bargaining in bad faith, E's conduct, found unlawful herein, caused strike and therefore was ULP strike)

Lucy's, Inc. **JD-832-79**
(strike held ULP strike, notwithstanding presence of economic issues, where Ees were apprised of E's ULP conduct before engaging in strike)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(mere fact that ULP is committed prior to a strike does not necessarily render that strike ULP strike; there must be evidence of causal connection)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(where strike not ULP strike, ct will not enforce Bd's order of reinstatement and backpay; record was devoid of evidence that impasse over nonmandatory subject (presence of stenographers at negotiating sessions) contributed to U's decision to strike)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**
(strikers entitled to unconditional reinstatement as ULP strikers where E had refused to bargain with U as representative of seasonal as well as nonseasonal workers and as E cannot unilaterally change scope of recognized bargaining unit, its attempt to do so made strike an unfair labor strike)

7800 'NATIONAL LABOR RELATIONS BOARD'

8500 'SUPERVISOR'

8501 GENERALLY

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(possession of any one of enumerated powers set forth in Sec. 2(11) of Act establishes supervisory status)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(supervisory functions listed in Section 2(11) read in disjunctive and existence of any one of the functions sufficient to confer supervisory status)

8501-2000 Existence of statutory power controlling

Gurabo Lace Mills, Inc. **249 NLRB No. 093**
(if Ee possesses any one of supervisory criteria of Sec. 2(11) of Act he will be found supervisor as balancing test is not used to determine supervisory status)

8501-4000 Functions, duties, and authority, rather than titles significant

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(notwithstanding E referred to Ee as supervisor, Ee found to be an agent of E and not a supervisor,where Ee had none of the authority vested in supervisory personnel and relayed information from management to Ees; he had been placed by management in strategic position where Ees could reasonably believe he spoke on E's behalf)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(individual held not supervisor absent evidence of supervisory authority, notwithstanding he was referred to as supervisor and on occasion introduced to new Ees as supervisor since *supervisory status may not be determined on basis of title alone, but upon application of Section 2(11) standards*)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**
(individual designated *night acting manager* at food stand held not supervisor, notwithstanding cousin of owner, where he performed same duties as countermen most of shift, compensation less than that of some individuals in unit, only responsibility associated with title was counting of receipts and locking of doors; further, individual had hired only one person which was reviewed by management, and had no control over wages or scope of work of person hired, nor is his expressing displeasure when co-workers did not perform their share of duties)

8520 INDICIA OF SUPERVISORY STATUS

8520-0800 Authority to hire, discipline, assign, etc.

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(leadmen held supervisors, notwithstanding little opportunity to exercise their authority to hire, fire, or discipline Ees; furthermore, E placed leadmen in strategic position where Ees could reasonably believe that they speak on E's behalf)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(sole group leader in department held supervisor where she trains Ees, corrects their work, adjusts Ee grievances, approves overtime, grants time off, reassigns Ees to different work areas and issues oral warnings, notwithstanding she lacks authority to hire, fire, promote or grant wage increases)

Commercial Testing & Engineering Co. (Teamsters, Local Union 175) **248 NLRB No. 096**
(notwithstanding much of time spent performing unit work)

Leyendecker Paving, Inc. **247 NLRB No. 010**
(although Ee at highway and construction company worked with his hands, supervisory status was found where Ee was paid substantially greater wages than rest of his crew, drove company truck, had power to authorize overtime work, recommended wage increases, assigned or transferred jobs based on his discretion, had authority to discipline and conceded his job was similar to admitted supervisor)

Gladwin Corporation **JD-565-80**

8520-1600 Power 'effectively to recommend'

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(hourly paid leadlady held supervisor where she effectively recommended retention of probationary Ees, responsibly directed work of Ees in her department and Ees were led to believe that she was in charge of department)

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(supervisor, despite E's denial that individual was or is supervisor)

Gladwin Corporation **JD-565-80**

Cardinal Heating and Cooling, Inc. **JD-835-79**
(although Ee could not take final action as to hiring, firing, or granting wage increases, Ee was able to effectively recommend such actions, and thus be considered supervisor)

8520-2400 Responsible direction

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(hourly paid leadlady held supervisor where she effectively recommended retention of probationary Ees, responsibly directed work of Ees in her department and Ees were led to believe that she was in charge of department)

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

8520-3200 Training, instruction and inspection functions

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**

8520-3900 Adjustment of grievances

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**

Gladwin Corporation **JD-565-80**
(hourly paid *crew leader* of machinists held supervisor wherehe was sole representative of E in charge of machinists at plant of E; in his own discretion, he assigned and reassigned work, he granted Ees time off, effectively recommended hire of machinists and adjusted grievances at first step of grievance procedure)

8520-4700 'Independent judgment' in exercise of authority

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(group leaders who possessed authority to adjust grievances, issue oral warnings, grant overtime, initial timecards, grant time off, reassign Ees to

8520-4700—Cont.

different work areas, enforce E's rules regarding safety, monitor abuse of coffee breaks and restroom priveleges and required to exercise independent judgment in performance of duties)

Misericordia Hospital Medical Center v. N.L.R.B. **623 F.2d 808 (C.A. 2, 1980)**

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**
(finding upheld that leadpersons at electronics manufacturer were supervisors in view of their exercise of independent judgment in their responsible direction of Ees' work, effective recommendation of Ees' wage increases, discipline of Ees, and assignment of work to Ees)

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**
(use of independent judgment in interest of management as ultimate test)

8520-6200 Substitution for supervisor

McKesson & Robbins Drug Co. **JD-(SF)-275-79**
(Ee who acted as interim supervisor held supervisor where she observed other Ees, evaluated them, made recommendations concerning discipline and E relied upon her for advice)

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

8520-7000 Ostensible authority

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(hourly paid leadlady held supervisor where she effectively recommended retention of probationary Ees, responsibly directed work of Ees in her department and Ees were led to believe that she was in charge of department)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(Ee found to be supervisor w/i meaning of Act; and assuming, *arguendo*, that she was not, she had held herself out to other Ees as agent of E)

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

8520-7800 Ratio to supervised employees

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(clerical found member of unit and eligible to vote where her duties are of routine nature and Ees who work with her require no direction; moreover since only 2 Ees work with her it would result in unrealistic supervisor/Ee ratio)

8520-8500 Training for supervisory positions

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(individual held supervisor and interrogation imputed to E where E had announced individual was soon to be supervisor and she assumed increasingly supervisory functions of interviewing and screening applicants, developing productivity rating system, instructing Ees and setting priorities)

8520-9200 Unless found supervisor, shop without supervisor

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**

Gladwin Corporation **JD-565-80**
(hourly paid *crew leader* of machinists held supervisor wherehe was sole representative of E in charge of machinists at plant of E; in his own discretion, he assigned and reassigned work, he granted Ees time off, effectively recommended hire of machinists and adjusted grievances at first step of grievance procedure)

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(*relief charge aide* on shift at nursing home held supervisor where had authority to discipline and if not supervisor home would be w/o supervisor for several hours each day)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**
(construction foreman, also designated mechanic-in-charge, engaged in elevator construction at jobsite)

8540 TYPES OF EMPLOYEES FOUND SUPERVISORY (BY SIC)

8540-1600 Construction other than building construction - general contractors

Leyendecker Paving, Inc. **247 NLRB No. 010**
(although Ee at highway and construction company worked with his hands, supervisory status was found where Ee was paid substantially greater wages than rest of his crew, drove company truck, had power to authorize overtime work, recommended wage increases, assigned or transferred jobs based on his discretion, had authority to discipline and conceded his job was similar to admitted supervisor)

8540-1700 Construction - special trade contractors

Don Pizzolato, Inc. **249 NLRB No. 136**
(salaried Ee who assigned work to other Ees, supervises their performance, reprimands them, recommends change in employment conditions, hiring, pledges firm's credit, in charge when E absent, has keys to office and no other officers or supervisors exist held supervisor)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**
(construction foreman, also designated mechanic-in-charge, engaged in elevator construction at jobsite)

8540-2000 Food and kindred products

Pacific Coast International Meat Co. **248 NLRB No. 183**
(foremen in steakcutting and wrapping subdivision of E engaged in meat processing where they attended production meetings, informed Ees of need for overtime and initialed time cards, were paid at higher rate and received benefits not available to rank and file Ees, interviewed job applicants and made recommendations notwithstanding independently reviewed)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(leadmen held supervisors, notwithstanding little opportunity to exercise their authority to hire, fire, or discipline Ees; furthermore, E placed leadmen in strategic position where Ees could reasonably believe that they speak on E's behalf)

8540-2200 Textile mill products

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(head packer at yarn producing facility)

Gurabo Lace Mills, Inc. **249 NLRB No. 093**
(Ee found supervisor, not leadman, where he was responsible for daily assignment of jobs, assisted Ees with problems, made Ee reassignments, adjusted grievances, interviewed prospective Ees; moreover, fact that he was only Spanish speaking person in authority caused E to rely heavily on his hiring recommendations)

8540-2600 Paper and allied products

Nice-Pak Products, Inc. **248 NLRB No. 173**
(leadperson on day shift found supervisor on other shifts where she assumed supervisory authority in absence of supervisors)

8540-2700 Printing, publishing, and allied industries

Times-Herald, Inc. **253 NLRB No. 066**
(sports editor at newspaper held supervisor where he effectively recommended hire of Ee and played role in hiring another Ee)

Times Herald Printing Company **252 NLRB No. 043**
(man-in-charge position found supervisory where Ees in those positions; are in charge of press, choose their assistants, substitute for foremen; assign crew members to various work tasks, evaluate trainees, write up Ees for rule infractions, attend management seminars, received priority parking spaces; moreover fact that these Ees did not have authority to hire or discharge is not dispositive)

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(*working foreman at newsprint warehouse held supervisor where he selected job applicants for hire, unilaterally determined overtime for other Ees; effectively recommended an Ee's transfer and implemented straight time* plan for reducing E's payroll expenses)

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. **249 NLRB No. 143**
(district managers who have authority to hire, discharge, assign, transfer and responsibly direct newspaper carriers who have been found to be Ees held supervisors)

N.L.R.B. v. Publishers Printing Company, Inc. **625 F.2d 746 (C.A. 6, 1980)**
(head of shipping and receiving department at commercial magazine publishing company held supervisory, where he assigned and directed work, and effectively recommended hiring of Ees)

N.L.R.B. v. Publishers Printing Company, Inc. **625 F.2d 746 (C.A. 6, 1980)**
(lead man or foreman responsible for stock paper control and delivery for commercial magazine publisher found supervisory in view of his hiring authority and overall responsibility)

8540-2700—Cont.

N.L.R.B. v. Publishers Printing Company, Inc. **625 F.2d 746 (C.A. 6, 1980)**
(foreman of pressroom section for commercial magazine publisher held supervisor where he assigned work and checked on its quality and had authority to hire and fire)

8540-2800 Chemicals and allied products

Avon Products, Inc. **250 NLRB No. 141**
(representative service department auditor/trainees at cosmetics manufactuere's branch operation found supervisory Ees where they are responsible for training team members and overseeing their work and that of team correspondents to enforce proper procedures and guidelines)

8540-3000 Rubber and miscellaneous plastics products

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(hourly paid leadlady held supervisor where she effectively recommended retention of probationary Ees, responsibly directed work of Ees in her department and Ees were led to believe that she was in charge of department)

8540-3200 Stone, clay, glass, and concrete products

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(individual in window fabrication division of manufacturer of windows and glass walls for office and apartment buildings held supervisor and ineligible to vote where he disciplined and corrected work of others, gave permission to leave work early, had overall responsibility for production in division and in view of vast difference in earnings from other individuals; further, if not held supervisor floor would be w/o supervisor)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(Ee at tile mortar and grout manufacturing plant held supervisor where Ee exercised sufficient independent judgment in matters of work assignments, direction of Ees, and control of their work performance)

8540-3400 Fabricated metal products, except machinery and transportation equipment

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(packaging foreman at manufacturer of automobile jacks found supervisor where she was represented to Ees as *boss*, did written evaluations on Ees, granted Ees time off, had authority to impose minor discipline w/o necessarily having right to discharge or recommend their discharge, and normally determined what person to assign to which job, thus exercising independent judgment based on her knowledge of abilities of persons involved)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(second shift foreman at manufacturer of automobile jacks found supervisor where he was only foreman on second shift which had some 12 Ees, and assigned Ees to jobs)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(Ee at metal fabricating plant who on day shift is rank-and-file Ee held supervisor on night shift because when on night shift he has complete charge of shift in every respect)

8540-3500 Machinery, except electrical

Dixon Industries, Inc. **247 NLRB No. 185**
(three leadmen in different departments of manufacturer of lawn moving equipment held supervisors, where one exercised independent judgment in training instruction, inspection, assignments, transfers, and quota fulfillment; another in scheduling work; and all in daily production process)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(Ee who assigned jobs to other Ees, selected Ees to perform jobs, designated particular jobs as rush found supervisor and not eligible to vote in election)

Gladwin Corporation **JD-565-80**
(hourly paid *crew leader* of machinists held supervisor wherehe was sole representative of E in charge of machinists at plant of E; in his own discretion, he assigned and reassigned work, he granted Ees time off, effectively recommended hire of machinists and adjusted grievances at first step of grievance procedure)

8540-3600 Electrical and electronic machinery, equipment, and supplies

Simpson Electric Company, a Division of American Gage & Machnie Company, Inc. **250 NLRB No. 035**
(group leader found supervisor where she assigned work, evaluated employees and effectively recommended actions to be taken on evaluations)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(sole group leader in department held supervisor where she trains Ees, corrects their work, adjusts Ee grievances, approves overtime, grants time off, reassigns Ees to different work areas and issues oral warnings, notwithstanding she lacks authority to hire, fire, promote or grant wage increases)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(group leaders who possessed authority to adjust grievances, issue oral warnings, grant overtime, initial timecards, grant time off, reassign Ees to different work areas, enforce E's rules regarding safety, monitor abuse of coffee breaks and restroom priveleges and required to exercise independent judgment in performance of duties)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(supervisor in *quality control* at plant manufacturing photoelectric devices held very low-level supervisor)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(master mechanic described as maintenance supervisor at plant manufacturing photoelectic devices held, at most, low-level supervisor)

8540-3700 Transportation equipment

Neckover Trailer Manufacturing Company **JD-256-80**
(assistant personnel manager at livestock trailer manufacturing plant)

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(Ee who corrected errors on time cards, granted Ees time off from work found supervisor where, if she were not, E would have only 1 supervisor for 140 Ees in 4-storey plant)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(*leadman* employed in fiberglass department of camper tops manufacturer held *supervisor* where he possessed and exercised authority to hire and fire Ees, responsibly directed work of Ees in his department and granted Ees time off)

8540-3900 Miscellaneous manufacturing industries

Hedison Manufacturing Company **249 NLRB No. 096**
(floorlady at costume jewelry manufacturing plant)

8540-4200 Motor freight transportation and warehousing

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(salesman who used title of Vice President held supervisor where he interviewed prospective salesment and his recommendations against hiring were final decisions, was closely allied with management during strike and his statements were ratified by management)

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(dock foreman at E engaged in transporting foods found supervisor where he had authority to hire and fire, did not do physical labor but instructed warehousemen, did paperwork, and handled grievances from Ees)

Commercial Carriers, Inc. **JD-136-80**
(*yard supervisor* at E engaged in shipping newly manufactured cars)

York Cold Storage **251 NLRB No. 054**
(Ee held supervisor and challenge to his ballot sustained, where he was classified as supervisor of warehouse for cold storage firm, before he was hired no one was classified as supervisor for this particular warehouse, other Ees were advised of his supervisory authority and were directed to take orders from him, and although he spent 50% of his time performing unit work, remainder of time was spent overseeing work of two or three Ees at warehouse, he had authority to reprimand Ees, request replacements if he felt Ees were incapable of handling work and could recommend raises)

8540-4700 Transportation services

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(taxicab driver-owners who subleased their vehicles to other drivers and, in subleasing their vehicles, participated in hiring, firing and setting of wages and other terms and conditions of employment)

8540-4900 Electric, gas, and sanitary services

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(working foremen at electrical contractor held supervisor where, if they were not supervisors, many Ees would be w/o supervision most of the time, they had considerable leeway in assigning men to specific tasks and in transfering Ees from one job to another, they were paid higher wages than other Ees, Ees considered them to be their supervisors, and they were responsible for inspecting work of Ees and ordering such corrections as they deemed necessary)

Maine Yankee Atomic Power Company v. N.L.R.B. **624 F.2d 347 (C.A. 1, 1980)**
(shift operating supervisors (SOS) at nuclear power plant found statutory supervisors where they: are in charge of control room, required to be there at all times, give responsible directions requiring use of independent judgment to two lower level classes, salaries 17 percent higher than lower level Ees, attend management meetings; responsibility level high due to complex, criterial character of job requirements; fact that SOS must inform his supervisor if emergency occurs does not strip him of authority to act)

8540-5000 Wholesale trade - durable goods

Battery Bill, Inc. **249 NLRB No. 030**
(*technical advisor* at E engaged in wholesale and retail sale of batteries where he effectively participated in employment of Ees)

Battery Bill, Inc. **249 NLRB No. 030**
(individual at E engaged in retail and wholesale of batteries where he approved leaves, participated in and made effective reconmendations as to raises and hiring)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ct upheld Bd's determination that individual who was *day warehouse foreman* at wholesale distributor of building and flooring materials supervisor where individual had exercised independent judgment in performance of his duties at least once, where he reassigned Ees in order to cover for ill Ees; existence of any one of functions listed in Section 2(11) sufficient to confer supervisory status thus Bd's decision had reasonable basis in law, notwithstanding individual had no authority to hire, promote or discharge Ees or even to recommend such actions and had voted in election w/o challenge)

Battery Bill, Inc. **249 NLRB No. 030**
(*technical advisor* at E engaged in wholesale and retail sale of batteries where he effectively participated in employment of Ees)

Battery Bill, Inc. **249 NLRB No. 030**
(individual at E engaged in retail and wholesale of batteries where he approved leaves, participated in and made effective reconmendations as to raises and hiring)

8540-5400 Food stores

Giant Food, Inc. **252 NLRB No. 182**
(lieutenant in security force found supervisor where he travels from store to store checking on appearance of guards, reports problems to higher management which result in discipline, sometimes administers discipline himself, had direct control over at least one Ee)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(Ee who was in charge of meat department, directed work of 3 Ees, determined conditions of employment, recommended wage increases and issued reprimands for deficient work held supervisor)

8540-5500 Automotive dealers and gasoline service stations

Elizabeth Motors, Inc. **252 NLRB No. 161**
(service manager)

Elizabeth Motors, Inc. **252 NLRB No. 161**
(parts manager)

8540-5900 Miscellaneous retail

Colorfax Laboratories, Inc. (Retail Store Employees Union Local 400) **248 NLRB No. 068**
(store managers of E engaged in providing photographic processing, printing and related services to professional photographers through retail outlets, held supervisory, where each store manager provides Ees under him with all requisite training, directs Ees in their duties, sets Ees' hours of work, and may, w/o prior approval and at his or her discretion, instruct Ees to work overtime)

8540-6300 Insurance

Pilgrim Life Insurance Company **249 NLRB No. 140**
(*group claims manager* at insurance company who was represented by E to Ees as supervisor, authorized to assign work, reviewed and corrected work of Ees, and whose earnings exceeded those of other clericals)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(individual in charge of IBM room at insurance company who trained new Ees, participated in hiring interviews, recommended Ees for raises, and was represented to Ees as supervisor)

8540-7000 Hotels, rooming houses, camps, and other lodging places

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(*executive housekeeper* and *assistant executive housekeeper* at motel held supervisors, and alleged threats to them thus not violative, where they recommended hiring, were authorized to suspend Ees, assigned, checked, and evaluated work of Ees)

8540-7800 Motion pictures

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(sound mixer on production of film found lacking supervisory authority where he did not possess actual authority to hire, fire, or discipline; recommendation regarding hiring of coworker was subject to independent investigation and final decision by others)

8540-8000 Health services

8540-8050 Nursing and personal care facilities

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(*relief charge aide* on shift at nursing home held supervisor where had authority to discipline and if not supervisor home would be w/o supervisor for several hours each day)

8540-8060 Hospitals

Exeter Hospital **248 NLRB No. 056**
(charge nurses held supervisors since they were responsible for preparing work schedules of Ees in their respective units and evaluating Ees for merit pay increases, and had authority to entertain grievances and to discipline Ees)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(head nurses at acute care monprofit hospital)

8540-8200 Educational services

Trustees of Tufts College **251 NLRB No. 108**
(accounts payable supervisor excluded from unit where she directs work of 4 Ees, with authority to excuse them from work, verbally discipline them, recommend written warnings, assign work, settle work disputes and grievances, evaluate Ees and also attends supervisors meetings)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; further, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

8560 INDICIA OF NONSUPERVISORY STATUS

8560-1000 Routine direction derived from skill and experience

Peat Manufacturing Company **251 NLRB No. 153**
(*troubleshooter* who worked on second shift in high pressure die cast aluminum department of injection molding manufacturer *not supervisor* where, although he was paid more than other production Ees, his benefits, working conditions and pay day were same as other Ees'; he did not attend supervisors' meetings, nor did he exercise independent judgment in assigning Ees to machines or effectively recommend discipline; he gave only routine directions and told Ees that *he was not in charge*)

Central Freight Lines, Inc. **250 NLRB No. 063**
(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(Ee in charge of cash room found not supervisor but lead person where nature of work routine and additional responsibility arose from experience and familiarity with E's operations)

Judd Valve Co., Inc. **248 NLRB No. 018**
(leadman not supervisory where, because of his expertise, he was relied on by E to lend technical assistance to fellow Ees)

American Diversified Foods, Inc. **247 NLRB No. 009**
(shift managers of fast food restaurant found non supervisory personnel in light of fact that as senior Ees they were familiar with store's operational routine, helped counter Ees work smoothly in cooperative rather than controlling manner, performed same work functions as counter Ees, worked regular shifts. Shift managers were at most lead-men who had no role in formulating or affecting management policy)

8560-1500 Lack of authority to hire, discipline, assign, etc.

Central Freight Lines, Inc. **250 NLRB No. 063**

8560-1500—Cont.

(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**

8560-1800 Prospect of being promoted to supervisor

Sylvester's Corp.; d/b/a Gene Sylvester Alarm Co.; et al. **249 NLRB No. 161**
(challenge to ballot of former supervisor overruled where Ee, initially returned to do unit work to complete complex installation but since then has performed on other jobs as well though he has not exercised any supervisory authority whatsover, E has not informed Ees of former supervisor's change in status and installation not yet completed)

8560-2500 Performance of duties once performed by supervisor

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

8560-4000 Relaying of orders and information; assignment of work

Judd Valve Co., Inc. **248 NLRB No. 018**
(leadman at check valve manufacturing plant, who acts as conduit to management, not supervisory)

8560-5000 Limited or sporadic exercise of supervisory power

Judd Valve Co., Inc. **248 NLRB No. 018**
(insufficient to establish leadman as supervisor)

8560-7000 Training, instruction and inspection functions

Permanent Label Corporation **248 NLRB No. 021**
(Ees who exercise some independent judgment based on their technical expertise held technical Ees not managerial)

8560-9000 Recommendations reviewed by supervisors

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**

8580 TYPES OF EMPLOYEES FOUND NONSUPERVISORY (BY SIC)

8580-1600 Construction other than building construction - general contractors

Stafford Construction Co. **250 NLRB No. 128**
(*grade checker* found nonsupervisory where he works as assistant to foreman, does not assign operators to equipment, never had any supervisory authority and unlike foreman is hourly paid)

8580-2200 Textile mill products

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(section men at yarn producing facility)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(utility and air conditioning mechanic at yarn producing facility)

8580-2500 Furniture and fixtures

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(shipping clerk of furniture manufacturing company, held nonsupervisory Ee)

8580-2700 Printing, publishing, and allied industries

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(assistant foreman at newspaper held not supervisor notwithstanding facts that he sometimes acted as foreman in absence of foreman, including filling in for him at management meetings, occasionally authorized overtime w/o checking with anyone else and took it upon himself to go and secure late copy from reporters, where his activities as supervisor were performed on sporadic basis; he never granted time off, had no authority to either hire or fire or to recommend same, or to rate or evaluate Ees, or to suspend them or even to reprimand and was not regarded by other Ees as boss)

Alco-Gravure, Inc. **249 NLRB No. 137**
(Bd held control monitors and job operators who perform much the same functions in ensuring quality of publications for E engaged in rotogravure printing of newspaper supplements and advertising materials were not supervisors, where they did not exercise real supervisory authority over Ees and did not possess any of usual indicia of supervisory authority; nor were they managerial Ees as they did not exercise judgment and discretion independent of E's established policies and were not involved in formulation, determination, and effectuation of management policies)

Print-O-Stat, Inc. **247 NLRB No. 047**
(*gang leaders* in production departments at printing plant, since performance of their duties did not require exercise of independent judgment, but rather they functioned essentially as senior experienced lead personnel and their direction of other Ees was dictated solely by demands of each production job, notwithstanding they had authority to grant time off, assign Ees to work overtime, and make job assignments)

8580-3000 Rubber and miscellaneous plastics products

Permanent Label Corporation **248 NLRB No. 021**
(floor lady position which was purely routine and involved no exercise of discretion not supervisory)

8580-3300 Primary metal industries

Peat Manufacturing Company **251 NLRB No. 153**
(*troubleshooter* who worked on second shift in high pressure die cast aluminum department of injection molding manufacturer *not supervisor* where, although he was paid more than other production Ees, his benefits, working conditions and pay day were same as other Ees'; he did not attend supervisors' meetings, nor did he exercise independent judgment in assigning Ees to machines or effectively recommend discipline; he gave only routine directions and told Ees that *he was not in charge*)

8580-3400 Fabricated metal products, except machinery and transportation equipment

High Performance Tube, Inc. **251 NLRB No. 181**
(foreman found leadman not supervisor where lacked authority to hire, recommend personel actions to management and actions such as asking Ee to increase production, recommending improvements in tool room, training new Ees, inspecting product, keeping production records do not elevate status to that of supervisor)

8580-3600 Electrical and electronic machinery, equipment and supplies

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(Ee who described himself as leadman-supervisor at plant manufacturing photoelectric devices)

8580-3800 Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks

Brooks Cameras, Inc. **250 NLRB No. 116**
(warehouse clerk in charge of receiving at warehouse of retailer of cameras and photographic equipment, not supervisory where he lacked authority to hire, fire, discipline, grant time off or schedule work assignments, exercised independent judgment only once, and, although second most senior of all warehouse Ees, he was paid less than truck drivers)

8580-3900 Miscellaneous manufacturing industries

Hedison Manufacturing Company **249 NLRB No. 096**
(plant nurse at costume jewelry manufacturing plant)

8580-4200 Motor freight transportation and warehousing

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(warehouse foreman held non supervisor where his job of seeing that trucks were properly loaded and Ees left with trucks to which they were assigned did not involve use of independing judgment)

Tri-State Motor Transit Company **251 NLRB No. 144**
(dispatcher at freight transportation company held nonsupervisory where he associated with Ees as fellow Ee, sometimes did rank-and-file yard work, and only assignment of work to Ees was of sporadic and routine nature, in connection with duties as dispatcher; any direct action, so far as Ees were concerned, could be taken only after clearance with terminal manager or company headquarters)

Central Freight Lines, Inc. **250 NLRB No. 063**
(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(leadmen at E engaged in transporting foods found not to be supervisors where they had no true discretion, performed physical labor 90 to 100% of time, were expected to move same amount of freight with other Ees, and voted as unit Ees in prior Bd election w/o objection from E)

8580-4800 Communication

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**
(individual who identified herself as *office manager* at E engaged in installation and servicing of cable television systems since she lacked authority to

8580-4800—Cont.

direct Ees or to effectively recommend hires, nature of work routine and individual's authority at most was that of leadman, some clericals were hired w/o any consultation with individual and consultation in other cases brief and informal)

8580-4900 Electric, gas, and sanitary services

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

8580-5000 Wholesale trade - durable goods

Goldies, Inc. v. N.L.R.B. **628 F.2d 706 (C.A. 1, 1980)**

(countermen who acted as salesmen of auto parts at supplier of domestic and foreign automobile and truck parts found nonsupervisory where they had power only to spasmodically and infrequently give reprimands and their occasional assignment of partsmen and giving of directions were routine)

8580-5100 Wholesale trade - nondurable goods

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

(*lead person* at E engaged in packing and wholesale distribution of meat since she possessed no true supervisory authority notwithstanding suggested names for possible hiring and went over orders to make sure things were cleaned up at end of day and could allow persons to leave during day)

8580-5300 General merchandise stores

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

(clerical found member of unit and eligible to vote where her duties are of routine nature and Ees who work with her require no direction; moreover since only 2 Ees work with her it would result in unrealistic supervisor/Ee ratio)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

(Ee in charge of cash room found not supervisor but lead person where nature of work routine and additional responsibility arose from experience and familiarity with E's operations)

8580-5400 Food stores

Quik-Pik Food Stores, Inc. **252 NLRB No. 076**

(assistant manager at one of E's multiple retail food stores held not supervisor, notwithstanding she was higher rated Ee than cashiers, was paid more, possessed keys to store, was in charge of closing books at end of week, where she had no authority to hire and fire or authority effectively to recommend such action, no authority to issue formal reprimands; she functioned simply as experienced Ee with *lead* authority)

8580-5500 Automotive dealers and gasoline service stations

Maremont Corporation, World Parts Division **251 NLRB No. 110**

(personnel office secretary under immediate supervision of personnel manager of E engaged in distribution of automotive parts, not supervisor, notwithstanding her access to confidential information)

8580-5800 Eating and drinking places

B. K. Restaurants Olean, Inc., d/b/a Burger King Restaurant **252 NLRB No. 065**

(crew leader at restaurant, not supervisory Ee, where her duty was routine in nature and did not involve exercise of independent judgment)

American Diversified Foods, Inc. **247 NLRB No. 009**

(shift managers of fast food restaurant found non supervisory personnel in light of fact that as senior Ees they were familiar with store's operational routine, helped counter Ees work smoothly in cooperative rather than controlling manner, performed same work functions as counter Ees, worked regular shifts. Shift managers were at most lead-men who had no role in formulating or affecting management policy)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**

(individual designated *night acting manager* at food stand held not supervisor, notwithstanding cousin of owner, where he performed same duties as countermen most of shift, compensation less than that of some individuals in unit, only responsibility associated with title was counting of receipts and locking of doors; further, individual had hired only one person which was reviewed by management, and had no control over wages or scope of work of person hired, nor is his expressing displeasure when co-workers did not perform their share of duties)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**

(working lead bartender at restaurant held nonsupervisory where he did not have authority to hire or fire bar area Ees, nor did he effectively recommend such action except in 3 limited instances and merely exercised some ministerial supervisory functions such as working out Ee work schedules)

8580-6300 Insurance

Pilgrim Life Insurance Company **249 NLRB No. 140**

(individual in charge of *office pays* at insurance company who punched time clock, was paid time and half for overtime, and received same benefits as others in department, had never recommended that any Ee be disciplined, fired, or hired, and absent evidence she could effectively recommend such actions or that she directed work of Ees in any way)

8580-7000 Hotels, rooming houses, camps, and other lodging places

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**

(food clerk who maintains food and beverage inventories in E hotel's storerooms, held not supervisor or agent w/i meaning of Section 2(11) of Act)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**

(electrician who for 10 months prior to his discharge was *supervisor* in maintenance department of E hotel, held nonsupervisory Ee, where his direction of Ees was of no more than routine nature or required no exercise of independent judgment)

8580-7900 Amusement and recreation services, except motion pictures

Magic Mountain Corporation **JD-337-80**

(ski patrol member at ski resort, held to be not supervisor, where he enjoyed no special privileges as an assistant patrol leader, shared same working conditions with 4 other ski patrol members, had higher pay resulting from his seniority on patrol, never disciplined any Ee, and had no authority to hire, discharge, suspend, promote, grant time off, or to effectively recommend such actions)

8580-8000 Health services

8580-8060 Hospitals

Misericordia Hospital Medical Center v. N.L.R.B. **623 F.2d 808 (C.A. 2, 1980)**

(*head nurse* hat hospital held not supervisor since her direction of other Ees incidental to primary duty to maintain welfare of patients; further, she lacked authority to effectively recommend promotion or discharge of Ees or to make other independent decisions not involving patient welfare)

9300 'PROFESSIONAL EMPLOYEES'

9301 GENERALLY

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**

(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

9350 FOUND PROFESSIONAL

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**

(non-degree lab technician found professional Ee and excluded from unit where he has same supervision, performs same functions as degree technicians and is considered responsible technologist by E)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(*designer* at manufacturer and distributor of children's clothing excluded from unit of production and maintenance Ees and ineligible to vote since professional Ee)

9700 HEALTH CARE INSTITUTIONS

9799 Other

Barclay Hospital, Inc. **247 NLRB No. 144**

(medical school at private university held not health care institution where medical school's primary purpose is to educate rather than to provide medical services to community; although medical school's clinical programs involved treatment of patients, such programs were auxiliarly to fulfillment of medical school's primary educational mission)

Trustees of University of Pennsylvania **247 NLRB No. 132**

(medical school at private university held not health care institution where medical shcool's primary purpose is to educate rather than to provide medical services to community; although medical school's clinical programs involved treatment of patients, such programs were auxiliary to fulfillment of medical shcool's primary educational mission)

Albert Einstein College of Medicine of Yeshiva University **247 NLRB No. 070**

(medical college which provided *education and health services*, held not health care institution under Section 2(14) of Act, since primary purpose was to train physician's and to promote research and not to provide medical services to community, See *Albany Medical College*, 239 NLRB No. 106)

188 AUTHORITY AND STRUCTURE OF NLRB AS AGENCY

0100 GENERALLY

2000 ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS

2075 SEPARATION OF FUNCTIONS; 5 USC SECTION 554

Machinery Movers, Riggers and Machinery Erectors Local 136, Iron Workers (United Exposition Service Co., Inc.) **252 NLRB No. 058**

(APA not violated where GC investigates as well as prosecutes case; separability provision requires separation of those functions from decision making function)

4000 RELATIONSHIP TO OTHER GOVERNMENTAL AGENCIES

6000 THE BOARD

6001 GENERALLY

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**

(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final*, must be applied *prospectively* only)

6033 AUTHORITY UNDER STATUTE

6033-6000 Prescribe remedies

6033-6001 Generally

Ace Beverage Co. **250 NLRB No. 066**

(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

6033-8000 Rulemaking authority

6033-8001 Generally

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(substantive agency regulations--those that *affect individual rights and obligations*--have *force and effect of law* if grant of authority by Congress contemplates regulations issued, meet any limitations so imposed by Congress, and promulgation of such regulations must conform with any procedural requirements imposed by Congress)

6067 DELEGATION OF AUTHORITY

6067-2000 To Board panel

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**

(in rejecting contention that Bd's post-election review of campaign objections was arbitrary and capricious, ct found statutorily permissible procedure where Bd delegates any or all of its powers to three member panels of Bd members and Bd has wide discretion in setting standards for conduct of representation election; furthermore, Bd members themselves and not staff assistants made decision whether to review RD's decision concerning election)

6067-8000 To General Counsel

Ace Beverage Co. **250 NLRB No. 066**

(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

8000 THE GENERAL COUNSEL

8001 GENERALLY

Ace Beverage Co. **250 NLRB No. 066**

(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

8033 STATUTORY AUTHORITY

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD **632 F.2d 30 (C.A. 7, 1980)**

(contention that GC violated Act when he failed to issue ULP complaint against U that picketed for recognition after date of expedited election under 8(b)(7)(C) during period in which challenges to validity of election were being resolved, rejected; assuming limited review may be available under Freedom v. Kyne, ct held there is no specific and unambiguous provision of Act requiring action in conformity with E's immediate certification theory, and jurisdiction is, accordingly not present to consider GC's failure to treat as valid an election that had not yet been determined to be valid)

8033-3300 Final authority to investigate charges and issue complaints

8033-3375 Dismissal of charge not reviewable by courts

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct. IL)**

(GC's refusal to issue complaint based upon alleged ULPs, not violation of a constitutional right, and hence district ct lacked subject matter jurisdiction to review GC's refusal)

200 NLRB JURISDICTION

201 GENERALLY

3300 POLICY OF BOARD

Alstate Coin Machine Co., Inc. **JD-(SF)-272-79**
(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

6700 EFFECT OF PRIOR DECISIONS

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices may not render jurisdictional decisions, and then overrule them *retroactively* and thereby transform E's interim behavior, legal when pursued, into illegal ULPs; E's conduct after formal declaration by Bd that he is not covered by Act and before re-examination of that issue, cannot subsequently be branded ULP subjecting E to liability for back-pay)

6750 PRIOR DECISIONS NOT CONTROLLING

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final*, must be applied *prospectively* only)

8300 TIMELINESS OF RAISING ISSUE

St. Elizabeth Community Hospital v. N.L.R.B. **625 F.2d 123 (C.A. 9, 1980)**
(First Amendment challenge to Bd's jurisdiction over charitable hospital operated by religious order held timely raised, notwithstanding contention that issue could have been litigated at R proceedings before RD and no new or previously unavailable evidence was offered or special circumstances alleged to require Bd's consideration, since it is sufficient that hospital raised First Amendment issue in R proceedings before Bd and did not defer its challenge to enforcement proceedings; case remanded to Bd for further consideration in light of SCt's opinion in *NLRB v. Catholic Bishop,* 440 U.S. 490)

220 STATUTORY JURISDICTION

0100 GENERALLY

0150 INCUMBENT ON BOARD TO ESTABLISH LEGAL JURISDICTION AS AUTHORITY TO PROCEED

Margate Bridge Company **247 NLRB No. 205**
(when legal jurisdiction has been established and some relevant standard for assertion of jurisdiction has been met, immaterial that jurisdiction might be asserted under one of several different standards)

2500 PREEMPTION OF JURISDICTION OVER SUBJECT MATTER REGULATED BY ACT

2525 BOARD HAS EXCLUSIVE JURISDICTION IN ENFORCING ACT

2525-6000 Board jurisdiction not ousted because suit also arises under section 301(a)

2525-6050 Board may deal with unfair labor practice which also violates contract

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**

2525-6075 Board without original jurisdiction to enforce bargaining contract violations not constituting ULP's

Alstate Coin Machine Co., Inc. **JD-(SF)-272-79**
(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

2525-7000 Board proceedings not stayed pending bankruptcy proceeding involving respondent

Ralph Schaffner, an Individual d/b/a Schaffner Construction Co. **252 NLRB No. 136**
(Respondent's contention that ptn for summary judgment in backpay proceeding should be stayed pending discharge of Respondent's ptn from Bankruptcy ct in which Bd and discriminatees are named as creditors, rejected, since adjudication in Bankruptcy does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; since mtn to stay did not specifically deny or respond in any way to allegations of backpay specification, allegations of specification are deemed admitted)

2550 COURTS WITHOUT CONCURRENT JURISDICTION TO REDRESS UNFAIR LABOR PRACTICES

2550-1800 Doctrine of primary jurisdiction requires judicial abstention

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. **435 U.S. 497 (SCt, 1978)**
(state statute which sought to regulate pension plans which were product of collective bargaining negotiations and are mandatory subject of bargaining under NLRA held constitutional; NLRA did not preempt state statute since Federal Welfare and Pension Disclosure Act of 1958 expressly recognized and preserved state authority to regulate pension plans)

2550-4500 Arguable existence of unfair labor practice precludes assumption of jurisdiction by court

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(however, concept deemed inapplicable to Section 301 suits, with NLRB and federal cts having concurrent authority with respect to disputes arising under collective bargaining agreement even where conduct arguably protected or prohibited by Act involved)

2550-7200 Damage actions on account of unfair labor practices may be maintained

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(however, concept deemed inapplicable to Section 301 suits, with NLRB and federal cts having concurrent authority with respect to disputes arising under collective bargaining agreement even where conduct arguably protected or prohibited by Act involved)

2550-9000 Garmon preemption doctrine not applicable

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(presemption not applicable to Section 301 suits with NLRB and federal cts having concurrent authority with respect to disputes arising under collective bargaining agreement even where conduct arguably protected or prohibited by Act)

2562 STATE AGENCY JURISDICTION IN REPRESENTATION MATTERS

Albert Einstein Medical Center **248 NLRB No. 009**
(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

2587 STATE REGULATION OF PREEMPTED SUBJECT MATTER

2587-2500 State statute

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**
(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. **435 U.S. 497 (SCt, 1978)**
(state statute which sought to regulate pension plans which were product of collective bargaining negotiations and are mandatory subject of bargaining under NLRA held constitutional; NLRA did not preempt state statute since Federal Welfare and Pension Disclosure Act of 1958 expressly recognized and preserved state authority to regulate pension plans)

5000 STATUTORY CRITERIA OF JURISDICTION

7500 TERRITORIAL JURISDICTION

7567 OTHER

7567-1400 Puerto Rico

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that Bd has no jurisdiction because Constitution of Commonwealth of Puerto Rico and laws enacted thereunder regulate labor relations in Puerto Rico, rejected)

240 DISCRETION IN EXERCISE OF JURISDICTION

0100 GENERALLY

0167 JURISDICTION MAY BE EXERCISED UPON STATUTORY BASIS ONLY

0167-6700 Non-cooperation of employer

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. **JD-441-80**
(statutory jurisdiction asserted over Es, w/o regard to whether Es' operations met Bd's jurisdictional standards because Es failed to respond to numerous *subpoenas duces tecum* which sought jurisdictional information and evidence elicited at hearing demonstrated that revenues derived from Es' activities affecting interstate commerce were more than *de minimis*)

1700 BOARD AUTHORITY TO ESTABLISH SCOPE OF DISCRETIONARY JURISDICTION

1701 GENERALLY

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(Bd did not abuse its discretion by exercising jurisdiction over 2 man unit since Congress vested Bd with jurisdiction to fullest extent constitutionally permissible under commerce clause)

1701-5600 Retroactive application

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices may not render jurisdictional decisions, and then overrule them *retroactively* and thereby transform E's interim behavior, legal when pursued, into illegal ULPs; E's conduct after formal declaration by Bd that he is not covered by Act and before re-examination of that issue, cannot subsequently be branded ULP subjecting E to liability for back-pay)

2500 ADVISORY OPINIONS AS TO JURISDICTION (FOR JURISDICTIONAL HOLDINGS SEE 280)

North Middledale Corp. **253 NLRB No. 060**
(AO that Bd would assert jurisdiction over E engaged in business of managing and also functioning as owner of three apartment complexes w/i the state where it had gross revenues of approximately $790,000 per year and it was assumed that it purchased more than a *de minimis* amount of goods from outside the state)

Elias Mallouk Realty Corp. **253 NLRB No. 001**
(ptn for AO dismissed since record was inadequate to determine whether E met jurisdictional standard where E's denials of commerce allegations of R ptn and pending complaint were at variance with commerce data to which it had stipulated; further, adjudication of jurisdiction issue may be obtained in pending ULP proceeding and should await determination there, absent urgent need for earlier determination)

A. J. Clarke Management Corp. **249 NLRB No. 157**
(AO that Bd would assert jurisdiction over E engaged in business of providing management services to residential apartment buildings where total gross annual rental revenues derived from apartments managed by E are in excess of $500,000 standard established by Bd for residential apartments, and out-of-state purchases exceed $50,000)

Mandel Management Corporation (Local 32B--Local 32J, Service Employees) **248 NLRB No. 066**
(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)

Double A Property Associates, et al. **249 NLRB No. 050**
(Bd declined to issue AO requested by E who participated in ULP proceeding before State Bd, but did not raise jurisdiction issue therein, despite its sole and exclusive knowledge of jurisdictional commerce data; E's basic reason for filing instant ptn appears to be its dissatisfaction with State Bd's denial of mtn to reopen hearing and to secure different forum in which to be heard; State Bd's refusal to reopen hearing has nothing to do with issues of jurisdiction and is not relevant to ptn herein)

Wave Hill, Inc. (District Council 37, AFSCME, AFL-CIO) **248 NLRB No. 149**
(AO that Bd would not assert jurisdiction over not-for-profit environmental center which operates (1) aboretum and botanical garden, (2) arts and/or cultural center, and (3) environmental science center for conservation, education, and scientific studies, where E's annual gross revenue did not meet Bd's $1 million standard for assertion of jurisdiction over enterprises such as; E in many ways is similar to an art museum, contributes to cultural and educational values of community and thus acts as adjunct to educational system)

Mandel Management Corporation (Local 32B--Local 32J, Service Employees) **248 NLRB No. 066(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)**

2501 GENERALLY

Tavern Owners, Inc., d/b/a The Lighthouse Restaurant **251 NLRB No. 130**
(no evidentiary hearing provided for)

2550 LIMITED TO DETERMINATION OF APPLICABILITY OF DISCRETIONARY STANDARDS

Fundacion Educativa Ana G. Mendez, Inc. **249 NLRB No. 142**
(AO ptn dismissed since basic issue presented was whether E's full-time faculty members of college were covered by Act which does not fall w/i intendment of Bd's AO rules which are designed primarily to determine questions of jurisdiction by application of Bd's discretionary standards; furthermore, ptn would be dismissed because there is pending before Bd ULP proceeding which has advanced to formal stage when binding adjudication of jurisdictional issue can be obtained)

Double A Property Associates, et al. **249 NLRB No. 050**
(in declining to issue AO requested by E who participated in ULP proceedings before State Bd, Bd did not pass upon propriety of State Bd's rulings adverse to E, since AO is designed primarily for determining whether E's operations meet Bd's discretionary jurisdictional standard)

2900 DECLARATORY JUDGMENTS AS TO JURISDICTION

3300 BOARD DEFERENCE TO OTHER MEANS OF ADJUSTMENT

3367 CIRCUMSTANCES OF DEFERRAL

3367-0100 Generally

United Parcel Service, Inc. **252 NLRB No. 145**
(Bd will not defer to arbitration award unless evidence relevant to ULP case has been presented to arbitrator or panel)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(even when resolution of contract is more central to a case, Bd is not preempted by overlapping domain of arbitrator; Bd may choose to defer not only when there is an outstanding arbitral award but also in some circumstances when no award has been issued)

3367-0113 Purpose of fostering and facilitating existing collective-bargaining relationship

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. **613 F.2d 1102 (C.A.D.C.) (1980)**

3367-0113—Cont.

(submission to grievance and arbitration proceedings of disputes which might involve ULPs would be substantially discouraged if disputants thought Bd would give de novo consideration to issue which arbitrator might resolve)

3367-0125 Good faith disagreement between parties

Herman Brothers, Inc. **252 NLRB No. 121**

3367-0150 Spielberg standard of fairness

Kahn's and Company, Division of Consolicdated Food Co. **253 NLRB No. 004**

Hammermill Paper Company **252 NLRB No. 172**
(no deferral to arbitrator's award where arbitrator, in dealing with discharge of U steward, found steward's treatment unrelated to U activity; also, under award, U steward would not receive back pay as Bd remedy provides)

Bay Shipbuilding Corporation **251 NLRB No. 114**
(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since *coverage* which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

Amoco Texas Refining Company **251 NLRB No. 202**

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(ALJ rejected GC's contention that arbitration proceeding, denying discharge grievance, was not fair and regular because of Ee's status as U dissident in conflict with U leadership, key witness' lack of credibility in critical area, failure to present surveillance issue, and fact that Ee, in running for U office, challenged U and its relationship with E; in accord with Bd's ruling, such issues, including E's Spielberg defense, were best resolved at hearing wherein they were fully litigated)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(doubt regarding fairness of arbitration proceeding because arbitrator was permanent under parties' contract, and assertedly had vested interest in being retained in subsequent contracts by incumbent U officials held not justified; there was no trace of fraud or collusion either alleged or disclosed, and nothing in record to establish that U official involved in proceeding has or had anything to do with designating permanent arbitrator; arbitration proceeding in all other respects was fair and regular and award was not repugnant to Act)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(deferral to arbitration award denying discharge grievance, appropriate, where dischargee insisted on having expedited arbitration hearing which she was granted and was duly represented therein by U attorney whom she had requested and who assisted her in securing witnesses and otherwise preparing for arbitration; dischargee was provided full opportunity and litigated not only circumstances of discharge but also matters relative to her protected concerted activity and, in addition, she submitted her own position paper to arbitrator)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

Colonial Stores Incorporated **248 NLRB No. 142**
(no deferral to arbitration award denying Ee's grievance and finding that Ee was discharged for cause, where *cause* found by arbitrator was in fact Ee's protected concerted activity of protesting E's admitted failure to implement grievance settlement and U's failure to enforce agreement)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

Andersen Sand & Gravel Company **JD-655-80**
(no deferral to decision of arbitration panel where characteristics of forum cannot be determined nor basis for award shown)

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. **613 F.2d 1102 (C.A.D.C.) (1980)**

3367-0175 Adequate representation of Employee rights

3367-0175-6700 Where substantial conflict exists

Russ Togs, Inc. **253 NLRB No. 099**
(no deferral where U shop steward w/o discussing matter with grievants reported to E that grievants were urging other Ees to grieve E's underpayment of contractual wage rate and slow down in protest thereof, and U attorney told grievants that his representation in the arbitration of their grievance was for the U, not for them)

United Parcel Service, Inc. **252 NLRB No. 145**
(deferral inappropriate where U failed both to advocate Ee's claim that he was discharged for dissident activities and to present evidence on that claim)

United Parcel Service, Inc. **252 NLRB No. 145**
(deferral inappropriate where U failed both to advocate Ee's claim that he was discharged for dissident activities and to present evidence on that claim)

3367-0400 Bars to deferral in advance of arbitration

3367-0401 Generally

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(Bd properly refused E's request to defer to ongoing arbitration proceedings since deferral is considered only if raised as an affirmative defense, and E failed to make any explicit request for deferral)

3367-0405 Deferral inappropriate where charge involves individuals rights

Carpenters and Joiners, Local No. 1914 (W & H Conveyor Systems, Inc.) **250 NLRB No. 182**
(Bd declined to dismiss 8(b)(2) and (1)(A) complaint and to defer to grievance arbitration procedured provided by contract, since it is not Bd's policy to defer cases alleging interference with individual Ees' statutory rights)

3367-0420 Adequacy of representation of employee rights

3367-0420-6700 Where substantial conflict exists

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(deferral to arbitration award not warranted where interests of U are not in substantial harmony with those of Ee-grievants over operation of U's health and welfare fund)

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**
(deferral to U's grievance procedure inappropriate where interests of Ees are in conflict with that of U)

3367-0480 Availability of arbitration

3367-0480-2500 Effect of prior arbitration

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(contention that Bd erred in concluding that discharge was for cause because decision was contrary to arbitration panel's conclusion, rejected; Bd was not entitled to rely upon finding of panel because it did not decide whether ULP had been committed and only determined that agreement had been breached, and Bd found no ULP had been committed herein; proper means to enforce binding arbitration award is an action in district ct)

3367-0800 Availability of arbitration proceedings

3367-0825 Scope of grievance and arbitration contract provisions

Roadway Express, Inc. **JD-281-80**
(deferral to grievance machinery which did not provide for arbitration, unwarranted)

3367-1200 Willingness of parties to arbitrate

Newspaper Printing Corporation **JD-203-80**
(no deferral to arbitration where issue is E's insistance on referring grievances to arbitration solely on question of arbitrability since E has *evidenced course of conduct designed to rid itself of established bargaining relationship and attendent thereto* and grievance involved, which is classic example of whether Ee voluntarily quit or was constructively discharged, is ripe for arbitration)

3367-1700 **Nature of proceeding**

3367-1712 Proceeding established by contract

3367-1712-5000 **Grievance procedure with impartial arbitration**

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

3367-1775 Court suit

3367-1775-3300 **Under Section 301**

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(no deferral to decision in Section 301 suit upholding legality of contract provision requiring revocation of dues checkoff authorization only on forms provided by U since decision not res judicata where neither NLRB nor charging parties were parties to suit and Ees from whose pay dues were allegedly unlawfully withheld failed to appear, nor did ct express desire to dispose of ULP issue of whether continued withholding of dues was lawful after Ees had withdrawn checkoff authorizations by letter)

Newspaper Printing Corporation **JD-203-80**
(*refusal to arbitrate not per se violation of Section 8(a)(5); however where refusal to arbitrate, like refusal to comply with any contract provision, evidences intention to violate entire contractual undertaking and is part and parcel of unlawful scheme to repudiate bargaining obligation then refusal to arbitrate unlawful; in such circumstances Bd will order remedy even though U might also have remedy under Section 301 of Act*)

Newspaper Printing Corporation **JD-203-80**
(E's refusal to arbitrate or even submit to third step of grievance procedure involving whether E voluntarily quit or was discharged, unlawful; notwithstanding U might also have Section 301 remedy; nor was deferral to arbitration appropriate)

3367-1787 Non-Board settlement by parties

United States Steel Corporation **250 NLRB No. 059**
(C not dismissed notwithstanding grievance settlement agreement where unclear extent to which settlement agreement dealt with ULP issue and participation of charging party in settlement discussions, charging party never signed agreement nor is he willing to accept its terms since his acceptance conditional and conditions not met)

3367-3300 **Authority of tribunal making determination**

3367-3340 Identity of issues

3367-3340-5000 **ULP proceedings**

United Parcel Service, Inc. **252 NLRB No. 145**
(Bd will not defer to arbitration award unless evidence relevant to ULP case has been presented to arbitrator or panel)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**
(Bd's decision not to defer issue of Ees' discharge to arbitration award, appropriate, where dubious process of selecting arbitrator had been employed, arbitrator failed to discuss thoroughly issue of whether E had condoned misconduct given as reasons for Ees' discharge, and arbitrator failed to consider issue of Ees' picket line activities, which E expressly included among reasons for discharge and which GC claimed were protected activities)

3367-3360 Adequacy of decision

Andersen Sand & Gravel Company **JD-655-80**
(no deferral to decision of arbitration panel where characteristics of forum cannot be determined nor basis for award shown)

3367-5000 **Fair and regular nature of proceeding**

3367-5001 Generally

Babcock & Wilcox Co. **249 NLRB No. 099**
(Bd did not defer to arbitrator's award upholding discharge of U president allegedly for participating in wildcat strike, where award was repugnant to purposes and policies of Act; arbitrator did not explain what actions of president constituted *adoption* and *open support* of strike, and upheld discharge on president's failure or inability to stop strike, which was in direct repudiation of Bd principle that U officials may be disciplined on same basis as other Ees, but not for their failure to satisfy affirmative duty to stop strike)

Babcock & Wilcox Co. **249 NLRB No. 099**
(Bd did not defer to arbitrator's award upholding discharge of U president allegedly for participating in wildcat strike, where award was repugnant to purposes and policies of Act where, among other things, award failed to meet Bd's standard that *findings are consistent with the record evidence;* moreover, Bd did not engage in any review of record made before arbitrator; de novo or otherwise, in order to determine that arbitrator's conclusions were not supported by evidentiary facts he found)

3367-5025 Properly constituted tribunal

Herman Brothers, Inc. **252 NLRB No. 121**
(Spielberg principles are applicable in cases involving arbitration panels which operate w/o neutral arbitrators)

3367-5075 Result not repugnant to Act

Russ Togs, Inc. **253 NLRB No. 099**
(no deferral where arbitration award let discharges stand although protected activity was a cause for the discharges and arbitrator believed it was a cause)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award regarding discharge alleged unlawful herein since award repugnant to Act where there was misrepresentation to panel that Ee had previously been discharged for same offense)

Amoco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

General Telephone Company of Michigan **251 NLRB No. 099**
(no deferral to arbitrator's award suspending Ee for harrasing other Ees because they had not participated in strike, since arbitrator's decision was repugnant to Act; decision relied on subjective reactions of harassed Ees rather than effect harassment tended to produce)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

General Telephone Company of Ohio **248 NLRB No. 010**
(arbitrator's theory that E was free to change its general instructions which it had agreed with U to apply to unit herein held repugnant to Act, since application was pursuant to mutual agreement establishing certain working conditions and supplementing contract)

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 1980)**
(enforcement denied where Bd committed error in declining to defer to arbitration award as clearly repugnant to Act where arbitrator had determined that E had discharged Ee for just cause; Ee's conduct arguably unprotected and where arbitration award arguably characterizable as not inconsistent with Bd policy, Bd must defer to arbitrator's decision)

3367-5076 Consideration of unfair labor practices

Aeronca, Inc. **253 NLRB No. 026**
(Bd did not defer to arbitration award which rejected U grievance concerning Christmas turkey bonus because bonus was not covered, or protected, by contract, since arbitrator had not addressed himself to ULP issue and his award was contrary to ULP decisions under the Act)

B & L Motor Freight, Inc. **253 NLRB No. 014**
(deferral inappropriate where arbitration panel did not consider whether Ee discharged for engaging in protected concerted activity)

Kahn's and Company, Division of Consolicdated Food Co. **253 NLRB No. 004**
(no deferral to arbitrator's award where he did not consider whether discharge was motivated by discrimination for filing too many grievances)

Hammermill Paper Company **252 NLRB No. 172**
(no deferral to arbitrator's award where arbitrator, in dealing with discharge of U steward, found steward's treatment unrelated to U activity; also, under award, U steward would not receive back pay as Bd remedy provides)

The Motor Convoy, Inc. **252 NLRB No. 175**
(no deferral where arbitration panel did not consider whether Ee was in any way discharged for U or concerted activity)

3367-5076—Cont.

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award regarding discharge alleged unlawful herein where panel did not consider or rule upon statutory issue of discrimination)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award which upheld discharge since deferral would be repugnant to policies and purposes of Act where principal reason for discharge was E's irritation over Ee's protected activities)

Albertsons, Inc. **252 NLRB NO. 081**
(deferral inappropriate notwithstanding evidence concerning ULP presented to arbitrator where arbitrator did not discuss ULP in his decision)

Chemical Leaman Tank Lines, Inc. **251 NLRB No. 146**
(deferral warranted where arbitration award contains complete factual findings on safety issue, and there is the necessary parallelism between contractual and statutory issues; thus panel implicitly decided ULP question)

Koppel, Inc. **251 NLRB No. 096**
(deferral inappropriate where arbitrator was presented with evidence of discriminatee's protected activity but made no reference to such evidence or finding concerning activities as related to discharge)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**
(no deferral to decision of Joint State Committee regarding alleged unlawful discharge where committee did not hear testimony of supervisor who discharged Ee and decision did not indicate that consideration was given to issue of whether Ee's protected activities were reason for discharge; arbitrator must consider these issues though generally not necessary to pass upon ULP directly)

Peschke Packing Company **JD-(NY)-33-80**
(deferral appropriate where arbitrator was presented with ULP issue and with substantially all evidence that was presented later at ULP proceeding, and specifically dealt with U's argument of discriminatory motive for suspension and discharge and implicitly rejected it)

3367-6700 Stage to which contract enforcement proceeding has progressed

3367-6762 Arbitration or joint-committee proceedings

3367-6762-6700 After decision

Andersen Sand & Gravel Company **JD-655-80**
(no deferral to decision of arbitration panel where characteristics of forum cannot be determined nor basis for award shown)

3367-8300 Issues for which deference is sought

3367-8301 Generally

3367-8301-3300 Issues of contract meaning or application

Consolidation Coal Company **253 NLRB No. 104**
(disputes over existence of agreement between parties rather than interpretation of such agreements are not subject to deferral by Bd)

Bay Shipbuilding Corporation **251 NLRB No. 114**
(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since *coverage* which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

Laborers' International Union of North America, Local 89, AFL-CIO **JD-(SF)-266-80**
(deferral appropriate where charge alleged 8(a)(5) unilateral change because E granted Ees additional days off but refused to pay them)

N.L.R.B. v. Safeway Stores, Inc. **622F.2d 425 (C.A. 9, 1980)**
(Bd not required to defer to arbitrator's decision on grievability of Ees' transfers where sole issue presented to Bd was whether E had committed ULP by refusing to produce requested documents to defend its decision to transfer Ees)

3367-8312 Unit or representative status issues

3367-8312-1400 Representative determination

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(deferral to arbitration, inappropriate, where issues presented involved questions of accretion, representation, and appropriate unit; such issues are matters for decision by Bd rather than arbitrators)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(no deferral where issue was one of representation and appropriate unit)

3367-8312-4200 Unit determination

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(deferral to arbitration, inappropriate, where issues presented involved questions of accretion, representation, and appropriate unit; such issues are matters for decision by Bd rather than arbitrators)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(no deferral where issue was one of representation and appropriate unit)

3367-8312-8400 Accretion

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(deferral to arbitration, inappropriate, where issues presented involved questions of accretion, representation, and appropriate unit; such issues are matters for decision by Bd rather than arbitrators)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where question was whether newly-acquired plant involving transfer of 121 Ees to merged location was accretion to existing unit covered by bargaining agreement, deferral to pending grievance proceeding involving interests of only 8 Ees held inappropriate, since Bd has consistently declined to leave to arbitrator responsibility for determining whether newly-acquired plant was accretion to unit covered by bargaining agreement, and Ees and issues involved in the grievance proceeding are not coextensive with those involved herein)

3367-8331 Section 8(a)(4) alleged violations

Interlake, Inc. **253 NLRB No. 076**
(Bd has not deferred complaints alleging violations of Section *8(a)(4)* of Act to contractual grievance and arbitration procedures)

3367-8350 Discharge, layoffs or disciplinary action

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(deferral to arbitration award not warranted where interests of U are not in substantial harmony with those of Ee-grievants over operation of U's health and welfare fund)

United Parcel Service, Inc. **252 NLRB No. 145**
(Bd will not defer to arbitration award unless evidence relevent to ULP case has been presented to arbitrator or panel)

United Parcel Service, Inc. **252 NLRB No. 145**
(deferral inappropriate where U failed both to advocate Ee's claim that he was discharged for dissident activities and to present evidence on that claim)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award regarding discharge alleged unlawful herein since award repugnant to Act where there was misrepresentation to panel that Ee had previously been discharged for same offense)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award regarding discharge alleged unlawful herein where panel did not consider or rule upon statutory issue of discrimination)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award which upheld discharge since deferral would be repugnant to policies and purposes of Act where principal reason for discharge was E's irritation over Ee's protected activities)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(deferral to arbitration award denying discharge grievance, appropriate, where there was no evidence establishing U's complicity in discharge, no conflict existed between dischargee and U, her protected concerted activity was fully aired at hearing, arbitrator rejected dischargee's assertion that discharge resulted from confrontation with E in connection with her running for U office, and instead found that real reason for discharge was poor workmanship)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(no deferral where issue were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

American Bakeries Co., Inc. **249 NLRB No. 170**

3367-8350—Cont.

(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

Babcock & Wilcox Co. **249 NLRB No. 099**
(Bd did not defer to arbitrator's award upholding discharge of U president allegedly for participating in wildcat strike, where award was repugnant to purposes and policies of Act; arbitrator did not explain what actions of president constituted *adoption* and *open support* of strike, and upheld discharge on president's failure or inability to stop strike, which was in direct repudiation of Bd principle that U officials may be disciplined on same basis as other Ees, but not for their failure to satisfy affirmative duty to stop strike)

Babcock & Wilcox Co. **249 NLRB No. 099**
(Bd did not defer to arbitrator's award upholding discharge of U president allegedly for participating in wildcat strike, where award was repugnant to purposes and policies of Act where, among other things, award failed to meet Bd's standard that *findings are consistent with the record evidence;* moreover, Bd did not engage in any review of record made before arbitrator; de novo or otherwise, in order to determine that arbitrator's conclusions were not supported by evidentiary facts he found)

Colonial Stores Incorporated **248 NLRB No. 142**
(no deferral to arbitration award denying Ee's grievance and finding that Ee was discharged for cause, where *cause* found by arbitrator was in fact Ee's protected concerted activity of protesting E's admitted failure to implement grievance settlement and U's failure to enforce agreement)

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(upon overruling Electronic Reproduction, 213 NLRB 758, and returning to standard for deferral which existed prior to that decision, Bd held that ALJ properly refused to defer to results of arbitration proceedings wherein ULP issues ofdiscrimination involving reprimands and discharge were not litigated)

Peschke Packing Company **JD-(NY)-33-80**
(deferral appropriate where arbitrator was presented with ULP issue and with substantially all evidence that was presented later at ULP proceeding, and specifically dealt with U's argument of discriminatory motive for suspension and discharge and implicitly rejected it)

Newspaper Printing Corporation **JD-203-80**
(no deferral to arbitration where issue is E's insistance on referring grievances to arbitration solely on question of arbitrability since E has *evidenced course of conduct designed to rid itself of established bargaining relationship and attendent thereto* and grievance involved, which is classic example of whether Ee voluntarily quit or was constructively discharged, is ripe for arbitration)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 1980)**
(enforcement denied where Bd committed error in declining to defer to arbitration award as clearly repugnant to Act where arbitrator had determined that E had discharged Ee for just cause; Ee's conduct arguably unprotected and where arbitration award arguably characterizable as not inconsistent with Bd policy, Bd must defer to arbitrator's decision)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(contention that Bd erred in concluding that discharge was for cause because decision was contrary to arbitration panel's conclusion, rejected; Bd was not entitled to rely upon finding of panel because it did not decide whether ULP had been committed and only determined that agreement had been breached, and Bd enforces arbitration award after concluding that ULP had been committed, but Bd found no ULP herein; proper means to enforce binding arbitration award is an action in district ct)

3367-8362 Bargaining obligation

3367-8362-2000 Duty to furnish information

3367-8362-2001 Generally

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**
(no deferral of E's alleged refusal to furnish information where bargaining agreement did not provide that such information need not be furnished)

3367-8362-8000 Power to make unilateral changes in terms and conditions of employment

3367-8362-8039 Production quota

N.L.R.B. v. Safeway Stores, Inc. **622F.2d 425 (C.A. 9, 1980)**
(Bd not required to defer to arbitrator's decision on grievability of Ees' transfers where sole issue presented to Bd was whether E had committed ULP by refusing to produce requested documents to defend its decision to transfer Ees)

3367-8362-8056 Vacation pay

Vesuvius Crucible Company **252 NLRB No. 179**
(E's mtn to defer contract interpretation of accrued vacation pay for economic strikers denied as E's denial of pay is interference with basic statutory rights and warrants Bd's determination)

3367-8362-8075 Change in job classifications

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(no deferral where issue were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

3367-8362-8085 Discontinuance of holiday bonus

Aeronca, Inc. **253 NLRB No. 026**
(Bd did not defer to arbitration award which rejected U grievance concerning Christmas turkey bonus because bonus was not covered, or protected, by contract, since arbitrator had not addressed himself to ULP issue and his award was contrary to ULP decisions under the Act)

3367-8366 Union refusal to bargain

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(U's mtn to defer 8(b)(3) C proceeding to arbitration award, denied, where arbitrator dealt solely with issue presented to him by ct's order, and did not consider whether award, and U's demand upon E to comply with award, violated 8(b)(3))

3367-8367 Contractual obligations

3367-8367-5500 Referral provision

Sachs Electric Company **248 NLRB No. 092**
(in case involving U's discriminatory refusal to acord qualified members of other Us placement on referral list, Bd declined to defer to arbitration award of appeals committee since issue framed by committee was not factually parallel to statutory issue herein)

3367-8387 Other interference with Section 7 rights

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(no deferral where issue were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

5000 CESSION OF JURISDICTION TO STATE OR TERRITORIAL AGENCIES

6700 EFFECT OF OTHER STATUTES

6750 FAIR LABOR STANDARDS ACT

Margate Bridge Company **247 NLRB No. 205**
(Bd not bound by Labor's Wage and Hour Division classification of private toll bridge as non-retail establishment because Fair Labor Standards Act concerned with Es engaged in commerce while Bd's jurisdiction extends to Es *affecting commerce*)

6787 FREEDOM OF INFORMATION ACT

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**
(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

8300 LIMITATIONS ON DISCRETION IN EXERCISE OF JURISDICTION

260 STANDARDS FOR ASSERTION OF JURISDICTION

0100 GENERALLY

3300 COMPUTATION OF MONETARY VOLUME OF GOODS AND SERVICES

3320 MEASURE OF COMMERCE

3320-0100 Generally

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**
(jurisdiction asserted over E engaged in business of performing body work and painting of automobiles notwithstanding E failed to meet Bd's income requirements for retail enterprises, since non-retail revenue of $51,874 derived from Es who themselves meet Bd's standards for Es affecting commerce; goods valued at $27,856 purchased by E directly from sources located outside E's state and goods valued at $27,710 purchased from suppliers located in E's state who themselves purchased goods directly from outside state, when added together, establish Bd's jurisdiction)

Margate Bridge Company **247 NLRB No. 205**
(when legal jurisdiction has been established and some relevant standard for assertion of jurisdiction has been met, immaterial that jurisdiction might be asserted under one of several different standards)

3320-0137 Total business of employer

Greenlawn Funeral Home, Inc. **249 NLRB No. 141**
(in determining whether funeral home's gross revenues meet Bd's jurisdictional standards for retail enterprises revenues from *pre-need* sales deducted from its gross revenues since state law requires all *pre-need* income be held in trust until all contracted for services are provided or customer voids contract and requests refund)

3320-7500 Inflow

3320-7501 Generally

3320-7501-4000 Source of inflow

Mayar Morganroth and Jack Ferris, Co-Partners d/b/a The Leland; et al. **249 NLRB No. 159**
(supplies and equipment from entity previously found by Bd to be engaged in interstate commerce)

3320-7501-5000 Non-recurring capital expenditures

N.L.R.B. v. East Side Sanitation Service, Inc. **633 F.2d 217(T) (C.A. 6, 1980)**
(Bd did not abuse discretion in including non-recurring capital expediture for trucks when it applied non-retail standard of annual direct or indirect inflow or outflow of at least $50,000)

3320-7533 Direct

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(legal statutory jurisdiction asserted over professional corporation providing legal services where firm's direct out-of-state purchases together with its indirect purchases in commerce would reach $7,500. minimally when projected for 12 month period)

3320-7567 Indirect

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(legal statutory jurisdiction asserted over professional corporation providing legal services where firm's direct out-of-state purchases together with its indirect purchases in commerce would reach $7,500. minimally when projected for 12 month period)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(jurisdiction asserted over electrical subcontractor performing services valued in excess of $50,000 during year for general contractor who met Bd's administrative jurisdictional standards on basis of *direct inflow*; therefore, sub-contractor met Bd's jurisdictional standard on basis of *indirect outflow*)

3340 PERIOD OF COMPUTATION

3340-0100 Generally

Seafarers International Union of North America, Pacific District, AFL-CIO, and Its Affiliates (American Pacific Container Lines, Inc. (AMPAC)) **252 NLRB No. 105**
(although charging party was not an E w/i meaning of Act at time of alleged ULPs under Bd's discretionary standards, by date of hearing it received gross revenues, from its interstate operations, in excess of $50,000, and thus it was appropriate for Bd to assert jurisdiction)

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 084**
(where successor-E allegedly committed ULPs soon after taking over predecessor-E's business, Bd declined jurisdiction over successor-E absent evidence that predecessor-E's business during any 12-month period satisfied an applicable jurisdictional standard, or that successor-E's partial business projected forward satisfied an applicable jurisdictional standard)

3340-5000 Projection from short period

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 084**
(where successor-E allegedly committed ULPs soon after taking over predecessor-E's business, Bd declined jurisdiction over successor-E absent evidence that predecessor-E's business during any 12-month period satisfied an applicable jurisdictional standard, or that successor-E's partial business projected forward satisfied an applicable jurisdictional standard)

3360 ENTERPRISE WHOSE GOODS AND SERVICES ARE MEASURED

3360-3300 Integrated enterprise

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**
(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

3360-3333 Single employer

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

3360-5000 Successor employer

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(jurisdiction asserted over successor E since it stipulated that earlier predecessor was found to be engaged in commerce w/i meaning of Act in prior Bd decision and that it is successor, having employed same complement of Ees and continued predecessor's operations in same manner and successor E did not contest Bd's jurisdiction over it)

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 084**
(where successor-E allegedly committed ULPs soon after taking over predecessor-E's business, Bd declined jurisdiction over successor-E absent evidence that predecessor-E's business during any 12-month period satisfied an applicable jurisdictional standard, or that successor-E's partial business projected forward satisfied an applicable jurisdictional standard)

3360-8400 Employer engaged in both exempt and nonexempt enterprises

Harborcreek School for Boys **249 NLRB No. 177**
(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

3390 SERVICES INTIMATELY RELATED TO OPERATIONS OF EXEMPT ENTERPRISE

3390—Cont.

The Krebs School Foundation, Inc. **251 NLRB No. 187**
(jurisdiction asserted over institution providing special education to children with physical or mental disabilities, notwithstanding E's contention that federal district ct decision supported its argument that institution was exempt adjunct of state public school system, since Bd in prior decision had asserted jurisdiction over same institution and jurisdictional standard in district court case --- whether defendent acted *under color of state law* --- is based on entirely different considerations than is Bd's jurisdiction standards)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

Metro Ambulance Service, Inc. **249 NLRB No. 008**
(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**
(jurisdiction asserted where E, under terms of cost-plus-fee contract with Army, retained *substantial control* over such bargaining subjects as hiring, discharging, wages, hours, grievance proceedings, and other terms of employment, and allowed to negotiate collective bargaining agreements, notwithstanding Army wielded *some* influence over wages, promotions, discharges, set dress code and Ees used army facilities)

Board of Trustees of The Memorial Hospital of Fremont County Wyoming, A Political Subdivision of The State of Wyoming v. N.L.R.B. **624 F.2d 177 (C.A. 10, 1980)**
(where lease agreement between Trustees, who are exempt from Act, and Hospital provided that Hospital could not engage in collective bargaining Bd does not retain jurisdiction over Hospital for government subdivision's control over labor relations leaves Hospital unable to engage in meaningful collective bargaining)

3395 CONTROL OVER LABOR RELATIONS BY EXEMPT ENTERPRISE

Community Action Program of Oklahoma City and County, Inc. **251 NLRB No. 016**
(Bd asserted jurisdiction over nonprofit social services corporation funded primarily by grants from city, state and Federal agencies where only control Federal agency exercised over labor relations was salary limitations while E had control over disciplinary actions, hiring, firing and setting initial salaries)

R. W. Harmon & Sons, Inc. **250 NLRB No. 025**
(jurisdiction asserted over contractor furnishing bus service to school district, notwithstanding contention that E was exempt school district because contactual provisions gave school board right to make changes in routing, request transfer of drivers, require insurance and safety guidelines, and dismiss drivers it felt not qualified to operate bus, where contractor retained control over hiring, discharge, rates of pay, fringe benefits, grievances, assignment of drivers to routes, hours, and contract provided that company was independent contractor; *local in character* test rejected)

Soy City Bus Services, Division of R. W. Harmon & Sons, Inc. **249 NLRB No. 167**
(jurisdiction asserted over E that contracted with school district for bus services; Bd rejected contention that jurisdiction should not be asserted since bus service local-in-character; inasmuch as Bd no longer applies local-in-character test to educational institutions but instead employs *degree-of-control* test)

Metro Ambulance Service, Inc. **249 NLRB No. 008**
(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

N.L.R.B. v. Chicago Youth Centers **616 F.2d 1028 (C.A. 7, 1980)**
(public agency has control over funding, job classification and compensation, and other terms and conditions of employment of head start program run by private agency; thus public and private agencies are joint-Es and private agency shares exemption of public agency under Sec. 2(2) of Act from Bd jurisdiction)

6700 STANDARDS APPLICABLE TO SPECIFIC TYPES OF ENTERPRISES

6776 RETAIL ENTERPRISES

Nordstrom's Ambulance Service, Inc. and Atlantic Ambulance Service, Inc. **251 NLRB No. 137**
(retail standard applicable to E's ambulance service operation, where overwhelming majority of E's gross revenue is derived from services to individual patients rather than institutions to or from which they are being transported, E has no contract with any institution for its services, and fact that payment for services to individuals is by third parties such as insurance companies or state welfare agencies does not transform such activity into nonretail sales; E's revenue which is arguably derived from institutions is *de minimis* as compared to revenues from individual patients)

280 ENTERPRISES OVER WHICH THE BOARD DID OR DID NOT ASSERT JURISDICTION

0100 AGRICULTURAL PRODUCTION - CROPS

0200 AGRICULTURAL PRODUCTION - LIVESTOCK

0700 AGRICULTURAL SERVICES

0800 FORESTRY

0900 FISHING, HUNTING, AND TRAPPING

1000 METAL MINING

1100 ANTHRACITE MINING

1200 BITUMINOUS COAL AND LIGNITE MINING

1300 OIL AND GAS EXTRACTION

1400 MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS

1500 BUILDING CONSTRUCTION - GENERAL CONTRACTORS AND OPERATIVE BUILDERS

1600 CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION - GENERAL CONTRACTORS

1700 CONSTRUCTION - SPECIAL TRADE CONTRACTORS

2000 FOOD AND KINDRED PRODUCTS

2100 TOBACCO MANUFACTURES

2200 TEXTILE MILL PRODUCTS

2300 APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

2400 LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE

2500 FURNITURE AND FIXTURES

2600 PAPER AND ALLIED PRODUCTS

2700 PRINTING, PUBLISHING, AND ALLIED INDUSTRIES

2800 CHEMICALS AND ALLIED PRODUCTS

2900 PETROLEUM REFINING AND RELATED INDUSTRIES

3000 RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS

3100 LEATHER AND LEATHER PRODUCTS

3200 STONE, CLAY, GLASS, AND CONCRETE PRODUCTS

3300 PRIMARY METAL INDUSTRIES

3400 FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT

3500 MACHINERY, EXCEPT ELECTRICAL

3600 ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT, AND SUPPLIES

3700 TRANSPORTATION EQUIPMENT

3800 MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL, AND OPTICAL GOODS; WATCHES AND CLOCKS

3900 MISCELLANEOUS MANFACTURING INDUSTRIES

4000 RAILROAD TRANSPORTATION

4040 RAILWAY EXPRESS SERVICE

Missouri-Illinois Central Industries, Limited **252 NLRB No. 143**

(Bd did not assert jurisdiction over E engaged in freight handling services to various common carriers engaged in interstate commerce where *National Mediation Board* found activities of E and Ees performing such activities were subject to the *Railway Labor Act*)

4100 LOCAL AND SURBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION

4110 LOCAL AND SUBURBAN PASSENGER TRANSPORTATION

Nordstrom's Ambulance Service, Inc. and Atlantic Ambulance Service, Inc. **251 NLRB No. 137**

(having concluded that retail standard applies to E's ambulance service operation, Bd declined jurisdiction over E since its annual gross revenues were well below the $500,000 retail standard)

Metro Ambulance Service, Inc. **249 NLRB No. 008**

(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**

(jurisdiction asserted over E engaged in transportation of airline passengers between hotels and airport where E derived revenue in excess of $50,000 from its operations and satisfied jurisdictional tests as *link* in interstate commerce)

4120 TAXICABS

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**

(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

4150 SCHOOL BUSSES

R. W. Harmon & Sons, Inc. **250 NLRB No. 025**

(jurisdiction asserted over contractor furnishing bus service to school district, notwithstanding contention that E was exempt school district because contactual provisions gave school board right to make changes in routing,

4150—Cont.

request transfer of drivers, require insurance and safety guidelines, and dismiss drivers it felt not qualified to operate bus, where contractor retained control over hiring, discharge, rates of pay, fringe benefits, grievances, assignment of drivers to routes, hours, and contract provided that company was independent contractor; *local in character* test rejected)

Soy City Bus Services, Division of R. W. Harmo n & Sons, Inc. **249 NLRB No. 167**
(jurisdiction asserted over E that contracted with school district for bus services; Bd rejected contention that jurisdiction should not be asserted since bus service local-in-character; inasmuch as Bd no longer applies local-in-character test to educational institutions but instead employs *degree-of-control* test)

4200 MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING

4400 WATER TRANSPORTATION

4500 TRANSPORTATION BY AIR

4580 FIXED FACILITIES AND SERVICES RELATED TO AIR TRANSPORTATION

Ground Services, Inc. **253 NLRB No. 080**
(Bd refused to assert jurisdiction over corporation engaged in business of providing ground or fleet service to air carriers and other enterprises where National Mediation Board advised that corporation and its Ees were subject to the Railway Labor Act in view of nature of activities and control exercised by air carriers)

Air Cleveland, Inc. **253 NLRB No. 059**
(ptn of Ees of E engaged in providing certain ground services to air carrier dismissed, since National Mediation Board, by request of Bd, determined that E was w/i scope of *Title II of the Railway Labor Act)*

Mercury Service, Inc.; Mercury Refueling, Inc.; and Crew Transit **253 NLRB No. 057**
(jurisdiction not asserted over E engaged in providing support services for international air carriers where Bd advised by National Medication Board that Es activities and Ees performing activities were subject to Railway Labor Act)

4600 PIPE LINES, EXCEPT NATURAL GAS

4700 TRANSPORTATION SERVICES

4800 COMMUNICATION

4900 ELECTRIC, GAS, AND SANITARY SERVICES

4950 SANITARY SERVICES

Florida Cities Water Company **247 NLRB No. 111**
(jurisdiction asserted over investor-owned, for profit, private water and sewer utility company operating pursuant to state franchise notwithstanding it is subject to various regulations by State, where it has sufficient control over Ees' working conditions to enable it to bargain meaningfully with U)

5000 WHOLESALE TRADE - DURABLE GOODS

5100 WHOLESALE TRADE - NONDURABLE GOODS

5200 BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS

5300 GENERAL MERCHANDISE STORES

5400 FOOD STORES

5500 AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS

5600 APPAREL AND ACCESSORY STORES

5700 FURNITURE, HOME FURNISHINGS AND EQUIPMENT STORES

5800 EATING AND DRINKING PLACES

5810 EATING AND DRINKING PLACES

Tavern Owners, Inc., d/b/a The Lighthouse Restaurant **251 NLRB No. 130**
(Bd did not assert jurisdiction over tavern and restaurant enterprise where annual gross volume of business is less that $200,000 and business is not subject to interstate inflow or outflow standard)

5900 MISCELLANEOUS RETAIL

6000 BANKING

6100 CREDIT AGENCIES OTHER THAN BANKS

6200 SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES

6300 INSURANCE

6400 INSURANCE AGENTS, BROKERS, AND SERVICE

6500 REAL ESTATE

6530 REAL ESTATE AGENTS AND MANAGERS

North Middledale Corp. **253 NLRB No. 060**
(AO that Bd would assert jurisdiction over E engaged in business of managing and also functioning as owner of three apartment complexes w/i the state where it had gross revenues of approximately $790,000 per year and it was assumed that it purchased more than a *de minimis* amount of goods from outside the state)

A. J. Clarke Management Corp. **249 NLRB No. 157**
(AO that Bd would assert jurisdiction over E engaged in business of providing management services to residential apartment buildings where total gross annual rental revenues derived from apartments managed by E are in excess of $500,000 standard established by Bd for residential apartments, and out-of-state purchases exceed $50,000)

Mandel Management Corporation (Local 32B-- Local 32J, Service Employees) **248 NLRB No. 066**
(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)

Mandel Management Corporation (Local 32B-- Local 32J, Service Employees) **248 NLRB No. 066(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)**

6600 COMBINATIONS OF REAL ESTATE, INSURANCE, LOANS, LAW OFFICES

6700 HOLDING AND OTHER INVESTMENT OFFICES

7000 HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES

World Evangelism, Inc. **248 NLRB No. 117**
(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds and Ees' performance of work necessarily associated with those commercial activities)

7010 HOTELS, MOTELS, AND TOURIST COURTS

Waterford Park, Inc. **251 NLRB No. 124**
(Bd asserted jurisdiction over motel facility not withstanding it has close financial ties with racetrack; no evidence that labor dispute at motel would disrupt racetrack operations and also no significant state regulation of Ees working at motel)

7200 PERSONAL SERVICES

7300 BUSINESS SERVICES

7500 AUTOMOTIVE REPAIR, SERVICES, AND GARAGES

7540 AUTOMOTIVE SERVICES, EXCEPT REPAIR

7540—Cont.

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**

(jurisdiction asserted over E engaged in business of performing body work and painting of automobiles notwithstanding E failed to meet Bd's income requirements for retail enterprises, since non-retail revenue of $51,874 derived from Es who themselves meet Bd's standards for Es affecting commerce; goods valued at $27,856 purchased by E directly from sources located outside E's state and goods valued at $27,710 purchased from suppliers located in E's state who themselves purchased goods directly from outside state, when added together, establish Bd's jurisdiction)

7550 GASOLINE SERVICE STATIONS

Vantage Petroleum Corp. **247 NLRB No. 202**

(jurisdiction asserted over E petroleum company's operation of state parkway gas service stations under contract with the state, since state's actual exercise of control over E's operations is not to such degree as to impair E's control over labor relations so as to render E incompetent to bargain efficaciously with a U, nor does E's performance of services for state constitute performance of services intimately related to traditional state functions warranting nonassertion of jurisdiction)

7600 MISCELLANEOUS REPAIR SERVICES

7800 MOTION PICTURES

7900 AMUSEMENT AND RECREATION SERVICES, EXCEPT MOTION PICTURES

7940 COMMERCIAL SPORTS

Waterford Park, Inc. **251 NLRB No. 124**

(Bd asserted jurisdiction over motel facility not withstanding it has close financial ties with racetrack no evidence that labor dispute at motel would disrupt racetrack operations and also no significant state regulation of Ees working at motel)

8000 HEALTH SERVICES

8060 HOSPITALS

Bon Secours Hospital, Inc. **248 NLRB No. 019**

(1974 health care amendments show intent of Congress that Ees of religiously operated hospitals, unlike schools, are covered as it specifically refused to exclude such hospitals from coverage under Act; therefore assertion of jurisdiction proper)

Mid American Health Services, Inc. **247 NLRB No. 109**

(legislative history of 1974 health care amendments to Act indicates that Congress intended Act to apply to health care institutions operated by religious institutions thus nursing home run by Seventh Day Adventists comes w/i Bd's jurisdiction)

Board of Trustees of The Memorial Hospital of Fremont County Wyoming, A Political Subdivision of The State of Wyoming v. N.L.R.B. **624 F.2d 177 (C.A. 10, 1980)**

(where lease agreement between Trustees, who are exempt from Act, and Hospital provided that Hospital could not engage in collective bargaining Bd does not retain jurisdiction over Hospital for government subdivision's control over labor relations leaves Hospital unable to engage in meaningful collective bargaining)

8090 HEALTH AND ALLIED SERVICES, NOT ELSEWHERE CLASSIFIED

Madison County Mental Health Center, Inc. **253 NLRB No. 030**

(jurisdiction not asserted over county mental health center which operates facilities in county hospital and house owned by private organization, where E was created by county government to fulfill statutory obligation to provide care for mentally retarded and mentally ill persons, funding is 80 percent federal and state, budget is subject to approval and labor relations are generally governed by guidelines adopted by statutory mandated boards composed of members appointed by state agency and county commissioners)

8100 LEGAL SERVICES

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**

(Bd declined to reconsider, as urged by E, its decision to assert jurisdiction over law firms, enunciated in *Foley, Hoag & Eliot*, notwithstanding E's contention of impairment of attorney-client privilege; Bd was not persuaded that Ees of law firm differ from other Ees in a way to justify carving out exception to principle that U membership is not compatible with Ees' duty of loyalty to E, including duty of confidentiality)

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) **250 NLRB No. 065**

(jurisdiction asserted over labor law firm where its gross revenue figures come w/i Bd's expressed discretionary jurisdictional standards for law firms, and there was no sufficient policy reason for Bd to treat labor law firms differently than other law firms)

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) **250 NLRB No. 065**

(jurisdiction asserted over labor law firm with respect to allegation that the firm violated 8(a)(2) by recognizing and bargaining with U which it also represented as client)

8110 LEGAL SERVICES

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(legal services organization established and funded by Congress and providing legal services to qualified indigent persons held subject to Bd's discretionary standard, where it had gross annual revenues in excess of $2,000,000 and made purchases out of state in excess of $18,000; fact that direct purchases from outside state were less than $50,000 is immaterial)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**

(legal statutory jurisdiction asserted over professional corporation providing legal services where firm's direct out-of-state purchases together with its indirect purchases in commerce would reach $7,500. minimally when projected for 12 month period)

8200 EDUCATIONAL SERVICES

8210 ELEMENTARY AND SECONDARY SCHOOLS

The Krebs School Foundation, Inc. **251 NLRB No. 187**

(jurisdiction asserted over institution providing special education to children with physical or mental disabilities, notwithstanding E's contention that federal district ct decision supported its argument that institution was exempt adjunct of state public school system, since Bd in prior decision had asserted jurisdiction over same institution and jurisdictional standard in district court case --- whether defendent acted *under color of state law* --- is based on entirely different considerations than is Bd's jurisdiction standards)

St. Joseph's High School **248 NLRB No. 123**

(Bd reversed its assertion of jurisdiction over Catholic School in view of intervening Supreme Ct decision *NLRB v. Catholic Bishop of Chicago*)

Cardinal Timonthy Manning, Roman Catholic Archbishop of the Archdiocese of Los Angeles, A Corporation Sole; et al. **247 NLRB No. 121**

(on remand to reconsider in light of Supreme Ct's decision in *NLRB v. Catholic Bishop of Chicago*, Bd refused to assert jurisdiction over parochial high schools operated by Catholic Church and dismissed complaint)

N.L.R.B. v. Lay Faculty Association, Local 1261 **623 F.2d 818 (C.A. 2, 1980)**

(ct rejected Bd's claim to jurisdiction over Catholic high school notwithstanding title and responsibility for operating school visited in lay board, since it is suffusion of religion into curriculum and mandate of faculty to infuse students with religious creed which create conflict with Religion Clauses, not vesting of title, and Bd could not avoid becoming entangle with religious mission of school in setting of mandatory collective bargaining)

8290 SCHOOLS AND EDUCATIONAL SERVICES, NOT ELSEWHERE CLASSIFIED

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

8300 SOCIAL SERVICES

8330 JOB TRAINING AND VOCATIONAL REHABILITATION SERVICES

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' repre-

8330—Cont.

sentative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

8350 CHILD DAY CARE SERVICES

The Krebs School Foundation, Inc. **251 NLRB No. 187**
(jurisdiction asserted over institution providing special education to children with physical or mental disabilities, notwithstanding E's contention that federal district ct decision supported its argument that institution was exempt adjunct of state public school system, since Bd in prior decision had asserted jurisdiction over same institution and jurisdictional standard in district court case — whether defendent acted *under color of state law* — is based on entirely different considerations than is Bd's jurisdiction standards)

The Salvation Army of Massachusetts Dorchester Day Care Center **247 NLRB No. 062**
(objection to Bd's assertion of jurisdiction over day care center overruled since principles of Catholic Bishop of Chicago do not preclude assertion of jurisdiction inasmuch as Bd has held that day care centers are primarily concerned with custodial care of children, and only secondarily concerned with education)

8390 SOCIAL SERVICES, NOT ELSEWHERE CLASSIFIED

Harborcreek School for Boys **249 NLRB No. 177**
(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

Catholic Community Services **247 NLRB No. 103**
(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

8400 MUSEUMS, ART GALLERIES, BOTANICAL AND ZOOLOGICAL GARDENS

8420 ARBORETA, BOTANICAL AND ZOOLOGICAL GARDENS

Wave Hill, Inc. (District Council 37, AFSCME, AFL-CIO) **248 NLRB No. 149**
(AO that Bd would not assert jurisdiction over not-for-profit environmental center which operates (1) aboretum and botanical garden, (2) arts and/or cultural center, and (3) environmental science center for conservation, education, and scientific studies, where E's annual gross revenue did not meet Bd's $1 million standard for assertion of jurisdiction over enterprises such as; E in many ways is similar to an art museum, contributes to cultural and educational values of community and thus acts as adjunct to educational system)

8600 MEMBERSHIP ORGANIZATIONS

8630 LABOR UNIONS AND SIMILAR LABOR ORGANIZATIONS

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(contention of U council, acting in role of E, that Bd should decline jurisdiction when Ees are disciplined for allegedly unprotected participation in internal U politics, rejected, where Ees were treated disparately for engaging in protected activity of attending meeting called by their U for purpose of addressing discharge of fellow Ee by U council)

8660 RELIGIOUS ORGANIZATIONS

World Evangelism, Inc. **248 NLRB No. 117**
(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds and Ees' performance of work necessarily associated with those commercial activities)

Cardinal Timonthy Manning, Roman Catholic Archbishop of the Archdiocese of Los Angeles, A Corporation Sole; et al. **247 NLRB No. 121**
(on remand to reconsider in light of Supreme Ct's decision in *NLRB v. Catholic Bishop of Chicago*, Bd refused to assert jurisdiction over parochial high schools operated by Catholic Church and dismissed complaint)

Catholic Community Services **247 NLRB No. 103**
(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

8800 PRIVATE HOUSEHOLDS

8900 MISCELLANEOUS SERVICES

9100 EXECUTIVE, LEGISLATIVE, AND GENERAL GOVERNMENT, EXCEPT FINANCE

9200 JUSTICE, PUBLIC ORDER, AND SAFETY

9300 PUBLIC FINANCE, TAXATION, AND MONETARY POLICY

9400 ADMINISTRATION OF HUMAN RESOURCES PROGRAMS

9430 ADMINISTRATION OF PUBLIC HEALTH PROGRAMS

Madison County Mental Health Center, Inc. **253 NLRB No. 030**
(jurisdiction not asserted over county mental health center which operates facilities in county hospital and house owned by private organization, where E was created by county government to fulfill statutory obligation to provide care for mentally retarded and mentally ill persons, funding is 80 percent federal and state, budget is subject to approval and labor relations are generally governed by guidelines adopted by statutory mandated boards composed of members appointed by state agency and county commissioners)

Community Health and Home Care, Inc. **251 NLRB No. 094**
(E providing and administering comprehensive public health nursing and homemaker program to 10-town area in State held agency of towns it serves where E's board of directors is accountable to and appointed by public officials in towns served by the agency and therefore it is a political subdivision and exempt from Bd's jurisdiction)

9500 ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS

9600 ADMINISTRATION OF ECONOMIC PROGRAMS

9700 NATIONAL SECURITY AND INTERNATIONAL AFFAIRS

9900 NONCLASSIFIABLE ESTABLISHMENTS

300 INVESTIGATION AND CERTIFICATION OF REPRESENTATIVE

301 GENERALLY

5000 EXISTENCE OF QUESTION OF REPRESENTATION

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

308 WHO MAY RAISE QUESTION OF REPRESENTATION

0100	**GENERALLY**
2000	**EMPLOYEE OR GROUP OF EMPLOYEES**
4000	**INDIVIDUAL**
6000	**LABOR ORGANIZATION**
8000	**EMPLOYER**

316 HOW QUESTION OF REPRESENTATION IS RAISED

0100 GENERALLY

3300 DEMAND FOR AND REFUSAL OF RECOGNITION

3301 GENERALLY

3301-5000 Demand to represent employees as accretion to existing unit does not raise question of representation

United Hospitals, Incorporated and The Children's Hospital, Inc. **249 NLRB No. 063**

(no qcr raised where U sought to accrete unrepresented group of Ees employed in multi-E association, overwhelming majority of whom were excluded from covered unit, as Bd will not, on piecemeal basis, accrete to that unit unrepresented Ees of Es of multi-E association, and U did not seek to represent Ees in separate unit)

3375 IMPLIED DEMAND

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

6700 FILING OF PETITION FOR ELECTION

6717 ADEQUACY OF PETITION

6717-6700 As to description of unit

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**

(U's contention that deauthorization ptn should be dismissed since appropriate unit should include both office Ees and installers and technicians rather than only office Ees as pattern of bargaining has been to include separately certified units under one contract rejected, where no intent to merge two units into single unit as evidenced by reference in supplemental agreement to 2 units)

Catholic Community Services **247 NLRB No. 103**

(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

324 SHOWING OF INTEREST IN REPRESENTATION

0100 GENERALLY

0150 PURPOSE OF REQUIREMENT TO LIMIT ELECTIONS TO THOSE SITUATIONS WHERE THERE IS ENOUGH INTEREST TO JUSTIFY THEM

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(*Sec. 9(c)(1)(A) substantial interest requirement* is not jurisdictional prerequisite to Bd action; rather it is *administrative expedient only,* adopted to enable Bd to determine for itself whether or not further proceedings and warranted)

2000 INTEREST SHOWING AS NONLITIGABLE ADMINISTRATIVE MATTER

2033 WHERE REQUIREMENT IS BOARD POLICY

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(no need to litigate U support at initial ptn stage)

4000 EXTENT OF INTEREST REQUIRED

4020 BY PETITIONER

4020-2100 Showing where union merger or affiliation occurred

Monmouth Medical Center **247 NLRB No. 075**
(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

4020-4200 Where Board directed unit different from that sought by petitioner

4020-4267 Petitioner's showing must be adequate before election held

The Folger Coffee Company **250 NLRB No. 001**
(petitioner accorded 10 days from date of instant *Decision on Review* in which to submit requisite showing of interest to support election, since *voting group* found appropriate in instant case was larger than unit requested)

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**
(where record, on review of RD's decision, was unclear as to whether petitioner had made sufficient showing of interest for unit of E's truckdrivers expanded to include owner-operators and non-owner drivers of trucks leased to E, petitioner accorded period of 10 days in which to submit requisite showing interest to support instant election)

4060 DEAUTHORIZATION PETITIONER

4060-2500 Cannot be supervisor

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**
(U's contention that individual was supervisor and therefore ineligible to file deauthorization ptn, rejected, since petitioner was held Ee)

4080 RERUN ELECTIONS

4080-3300 New showing not required

Monmouth Medical Center **247 NLRB No. 075**
(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

6000 TIME FOR SUBMISSION OF SHOWING OF INTEREST

6033 BY PETITIONER

6033-3300 Showing need not be submitted with petition

The Folger Coffee Company **250 NLRB No. 001**
(petitioner accorded 10 days from date of instant *Decision on Review* in which to submit requisite showing of interest to support election, since *voting group* found appropriate in instant case was larger than unit requested)

8000 VALIDITY OF SHOWING

8025 AUTHENTICITY OF AUTHORIZATION

8025-1700 Must be showing of interest in representation, not merely election

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(U cards counted toward majority determination where Ees filled in, dated, signed and turned over cards to organizers after detailed explanation of meaning of cards was made both in English and Spanish, and after they were afforded opportunity to read cards before signing them)

8050 CURRENCY OF SHOWING

8050-2000 Stale showing

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(*authorization cards not stale* where elapsed time was about five months from date first card was signed in September, 1976, until ptn that resulted in election; request for recognition was made in November)

8075 DESIGNATION OF REPRESENTATIVE

8075-3300 Designation other than of petitioner

8075-3320 Of parent international

CAM Industries, Inc. (Millmen-Industrial Carpenters Local 262) **251 NLRB No. 004**
(E's refusal to bargain with U after card check established majority status violative notwithstanding authorization cards designated only International, for Bd has long held that such card serves as valid designation of affiliate when there was no confusion as to identity of potential representative in minds of signers)

8075-3380 Of predecessor union

Monmouth Medical Center **247 NLRB No. 075**
(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

332 DISCLAIMER OF INTEREST IN BEING REPRESENTATIVE

0100 GENERALLY

2500 IN PROCEEDINGS INITIATED BY EMPLOYER

2540 RESULT OF EFFECTIVE DISCLAIMER

2540-1700 Dismissal of petition in absence of question of representation

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

2540-6700 Disclaimer after decision directing election

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

5000 WITHDRAWAL BY PETITIONING UNION OR INTERVENOR

5012 DISCLAIMER OF INTEREST BY INCUMBENT UNION

William Moses, Estate of Bella Moses **247 NLRB No. 20**
(intervening incumbent U's disclaimer of interest in unit petitioned for by outside U held untimely and ineffective attempt to withdraw from multi-E bargaining unit, where intervenor had been bargaining representative of Ees for many years, it continued to represent them for 3 years after seeking to sever relationship with E, and it participated in recent contract negotiations for 6 months before announcing its disclaimer at time agreement was reached on virtually all issues)

William Moses, Estate of Bella Moses **247 NLRB No. 20**
(intervening incumbent U's attempted disclaimer of interest in representing Ees in unit petitioned-for by outside U, disallowed where disruptive of stable multi-E bargaining relationship; Bd's concern for stability in multi-E bargaining relationship not diminished merely because attempted disclaimer would remove intervenor from further bargaining; multi-E association had reason to believe negotiations with intervenor would reach fruition and existing bargaining relationship would endure; and if disclaimer were allowed intervenor would be reshaping composition of unit)

7500 DISCLAIMER IN DECERTIFICATION PROCEEDINGS

339 WHO MAY ACT AS REPRESENTATIVE

0100 GENERALLY

2500 LABOR ORGANIZATIONS

5000 INDIVIDUALS

7500 DISQUALIFICATION AS REPRESENTATIVE

7501 GENERALLY

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that no bargaining order should be issued because of U representative's misconduct during U organizing campaign, rejected, since U is not thereby disqualified from representing E's Ees inasmuch as issue herein is whether E should be ordered to bargain with U, not with U representative who may no longer be associated with U, or may not be U representative for bargaining with E)

7550 DOMINATION OR ASSISTANCE BY EMPLOYER

7550-5000 Participation of supervisors in union affairs

Rockford Memorial Association d/b/a Rockford Memorial Hospital **247 NLRB No. 051**
(contention U disqualified from representing Ees because of presence of supervisors in internal organization of International, rejected, absent evidence E's supervisors or these of third parties directly participated in or influenced U's bargaining process where all bargaining agreements negotiated by local committee composed of only bargaining unit personnel w/o interference, or requirement of approval by International's Bd of Directors)

7562 FRONTING FOR ANOTHER LABOR ORGANIZATION

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(international U not acting as front for local U of different international U; local was not substitute for international but was international's agent for handling matters concerning election, processes, ULPs, collective bargaining and contract enforcement; E, presented no evidence that international U intended to cede its certification to local or to abandon its bargaining rights)

7575 CONFLICT OF INTERESTS OF REPRESENTATIVE

7575-5000 Arising from relationship to other employers

Abington Memorial Hospital **250 NLRB No. 098**
(fact that leadership positions in labor organization representing E's Ees were held by supervisors employed by other Es does not, standing alone, create a conflict of interest disqualifying organization from representing E's Ees; Bd does not assume inherent conflict of interest in bargaining process between supervisors and Ees; rather, conflict of interest may result only when connection is shown between E of Ees who seek to be represented and third party Ees, and E failed to make such showing)

7575-8100 Arising from relationship to other unions

7575-8150 Parent union controlled, influenced or dominated by supervisors and affiliated unions

Eastern Maine Medical Center **253 NLRB No. 024**
(on remand from Bd for further hearing in light of Bd's Sierra Vista Hospital decision issued subsequent to ALJ's original decision, ALJ issued supplemental decision, adopted by Bd, which he based on detailed analysis of structure and internal functioning of nurses association involved herein, and held that association was not disqualified from representing E's Ees, since E failed to show disqualifying conflict of interest, presenting a clear and present danger to Ees or bargaining process, which may result from connection between E and any other E whose supervisors participate in affairs of nurse association)

Eastern Maine Medical Center **253 NLRB No. 024**
(on remand from Bd for further hearing in light of Bd's Sierra Vista Hospital decision issued subsequent to ALJ's original decision, ALJ issued supplemental decision finding that nurses association was not disqualified from representing E's Ees since, under Sierra Vista, Bd will not examine internal affairs of labor organization or role third party supervisors play in bargaining process absent demonstrated connection or relation between Ees and Es of supervisors who have positions of authorization in labor organization; here, E failed to show any such connection detrimental to association-represented Ees)

Abington Memorial Hospital **250 NLRB No. 098**
(mere assertion that E's supervisors hold leadership positions w/i nurses' labor organization insufficient to demonstrate *clear and present* danger of conflict of interest interfering with bargaining process; such participation will result in disqualification of labor organization only where activities of supervisors will affect E's interest in loyalty of its supervisors or Ees in representative uncompromised by loyalty to their E; and E failed to adduce evidence that its supervisors' activities w/i organization had any connection with organization's bargaining activities)

Abington Memorial Hospital **250 NLRB No. 098**
(fact that leadership positions in labor organization representing E's Ees were held by supervisors employed by other Es does not, standing alone, create a conflict of interest disqualifying organization from representing E's Ees; Bd does not assume inherent conflict of interest in bargaining process between supervisors and Ees; rather, conflict of interest may result only when connection is shown between E of Ees who seek to be represented and third party Ees, and E failed to make such showing)

Abington Memorial Hospital **250 NLRB No. 098**
(in finding that state-wide labor organization was not disqualified from representing Ees because supervisors held leadership positions in organization, Bd noted that organization had insulated its bargaining activities at local level from supervisory participation or influence, where local units, chartered by organization's commission solely for purpose of bargaining with an E, operated independently of state organization and made all decisions with regard to bargaining; and commission controlled expenditures of its own funds, and was not accountable to state organization for expenditures)

Healdsburg General Hospital **247 NLRB No. 030**
(nurses association held labor organization and not disqualified from acting as Ee representative on ground that association is subject to control by supervisors who are permitted to be members; even assuming that association is influenced by supervisors, that association represents *all* nurses including supervisors, and that such representation is costly and controversial, Bd held E failed to establish that any of these factors create conflict of interest sufficient to prevent association from acting as Ee representative)

Sidney Farber Cancer Institute **247 NLRB No. 001**
(professional nurses association not precluded from representing Ees notwithstanding contention disqualified by fact high percentage of state and district officers and directors of association are supervisors, absent evidence of supervisory domination of bargaining activities; since no Ees of E serve as officers or directors and supervisors excluded from membership in local chapters at which level bargaining decisions are made)

7575-9300 Union subject to influence and control by supervisors

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(Nurses' Association held labor organization not disqualified to represent E's Ees, even assuming that competitive relationships existed between E and other area hospitals, where there was no showing of conflict of interest between influence w/i Association of supervisor-members employed by competing hospitals and Association's capacity to represent E's Ees; presence alone of third-party supervisors in Association is not sufficient, since Bd will not assume any *inherent* conflict of interest between supervisors and Ees in bargaining process; see also Oak Park Community Hospital, 249 NLRB No. 120)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(Nurses' Assoc. held labor organization not disqualified to represent E's Ees, notwithstanding E's contention that specified supervisors, officials of Assoc. and employed by other hospitals, could influence to an impermissible degree bargaining between E and Assoc., since all bargaining responsibilities of Assoc. reside w/i Assoc.'s commission all of whose members are nonsupervisory nurses, bargaining on local level is conducted by elected Ee bargaining committee, and there was no reasonable likelihood that specified supervisors could meaningfully affect bargaining between E and Assoc.)

Sierra Vista Hospital, Inc. **249 NLRB No. 066**

339-WHO MAY ACT AS REPRESENTATIVE

7575-9300—Cont.

(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflict of interest under *Sierra Vista*, 241 NLRB No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

Exeter Hospital **248 NLRB No. 056**
(nurses association which included supervisors in leadership positions found to be unqualified to represent Ees since there was clear and present danger of conflict of interest which would interfere with collective bargaining process)

Rockford Memorial Association d/b/a Rockford Memorial Hospital **247 NLRB No. 051**
(contention U disqualified from representing Ees because of presence of supervisors in internal organization of International, rejected, absent evidence E's supervisors or these of third parties directly participated in or influenced U's bargaining process where all bargaining agreements negotiated by local committee composed of only bargaining unit personnel w/o interference, or requirement of approval by International's Bd of Directors)

Healdsburg General Hospital **247 NLRB No. 030**
(nurses association held labor organization and not disqualified from acting as Ee representative on ground association is subject to control of supervisors who are permitted to be members, since (1) there was no evidence E's supervisors belonged to association, and Bd will not resort to speculation about posibility, as claimed by E, that supervisors might join at some future time, and (2) E failed to meet *heavy burden* of showing *direct* conflict of interest because of possible relation between E and Es of supervisors participating in bargaining process)

347 BARS TO CONDUCT OF ELECTION

0100 GENERALLY

2000 PRIOR DETERMINATION OF REPRESENTATIVE

2017 BOARD CERTIFICATION AS REPRESENTATIVE OUTSTANDING

2017-5000 **Computation of certification year**

2017-5067 From date employer accepts bargaining obligation

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**
(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

2083 ELECTION WITHIN PRECEDING 12 MONTHS

2083-7500 **Deauthorization election**

2083-7583 Barred when precluded by State statute

Asamera Oil (U.S.) Inc. **251 NLRB No. 085**
(ptn dismissed where filed less than year after *authorization* election held pursuant to state law which provided for state conducted election before authorizing U security provision)

4000 CONTRACT WITH INCUMBENT REPRESENTATIVE

4010 PERIOD DURING WHICH CONTRACT WILL BAR PETITION

4010-2000 **Duration of contract**

4010-2014 Bar for term of contract not to exceed 3 years

Westwood Import Company, Inc. **251 NLRB No. 162**

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**

4010-2035 Contracts of unreasonable duration

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(if contract term exceeds three years, (R) ptn will be dismissed if it is outside 60-90 day period preceding contract's third *anniversary* date, even though it is filed between 60-90 days before contract's actual expiration date)

4010-4000 **Open period for filing during contract**

4010-4001 Generally

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(issue of whether current three year contract was bar to election ptn remanded to Bd to explain, why *membership* as used in contract should be interpreted differently depending on whether word appeared in U security clause or health benefit clause, and whether petitioner, to its detriment, reasonably relied on contract's cover dates in determining when to file election ptn; Bd must follow its own precedent by excluding extrinsic evidence from its consideration or explain why its rules should be disregarded; ct not allowed to substitute different rationale for that provided by Bd)

4010-4033 Petitions may not be filed more than 90 days before expiration date

4010-4033-2500 Dismissed if filed prior thereto

Westwood Import Company, Inc. **251 NLRB No. 162**

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(if contract term exceeds three years, (R) ptn will be dismissed if it is outside 60-90 day period preceding contract's third *anniversary* date, even though it is filed between 60-90 days before contract's actual expiration date)

4010-4067 Petitions may not be filed less than 60 days before expiration date

4010-4067-2500 Dismissed if filed within 60 day insulated period

Westwood Import Company, Inc. **251 NLRB No. 162**

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(if contract term exceeds three years, (R) ptn will be dismissed if it is outside 60-90 day period preceding contract's third *anniversary* date, even though it is filed between 60-90 days before contract's actual expiration date)

4010-8000 **Termination of contract prior to expiration**

4010-8020 By mutual consent

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

4010-9000 **Automatic renewal of contract in absence of notice to terminate**

Empire Screen Printing, Inc. **249 NLRB No. 101**
(where contract contained automatic renewal clause unless either party gave timely written notice prior to contract's anniversary date of desire to modify or terminate agreement, Bd adhered to its position that parties, by their course of bargaining, did not waive untimeliness of U's notice to modify contract, and did not forestall renewal of contract)

Empire Screen Printing, Inc. **249 NLRB No. 101**
(decertification ptn dismissed where existing contract specifically required timely notice of intention to modify or terminate contract in order to forestall renewal, but neither party herein gave such timely notice, and contract by its terms automatically renewed for one year)

4040 ADEQUACY OF CONTRACT FORM AND SUBSTANCE

4040-1700 **Form of contract**

4040-1720 Oral contract

4040-1720-5000 Ineffective as bar

Empire Screen Printing, Inc. **249 NLRB No. 101**
(oral agreement concerning wage increase held no bar to decertification ptn since it did not satisfy requirements that for agreement to achieve bar quality it must contain substantial terms and conditions of employment, and must be signed by all parties)

4040-1750 Questionable signature, initialed or unsigned document

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**
(parties' initials on agreement satisfied Bd's requirements that written agreement be signed by both parties in order to bar election)

4040-3300 **Unit covered**

4040-3333 Employees covered by contract do not constitute appropriate unit

4040-3333-3300 Contract held not bar

4040-3333-3333 Where employees covered are not accretion but contitute separate appropriate unit

Westwood Import Company, Inc. **251 NLRB No. 162**
(where relevant considerations are not free from doubt as to whether or not Ees are accretion to existing unit, Bd and cts are in agreement that best way to resolve close question is through election process because accretion doctrine applied restrictively since it deprives Ees of opportunity to express their desires)

4040-3367 Members only contract

4040-3367-3300 Contract not equally applied to union members and nonmember employees no bar

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

4040-3367-3300—Cont.

(contract which contains provision extending special benefits to U members only, known as *members only* clause, will not bar election ptn; such contracts do not establish kind of stability that NLRA seeks to protect)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(issue of whether current three year contract was bar to election ptn remanded to Bd to explain, why *membership* as used in contract should be interpreted differently depending on whether word appeared in U security clause or health benefit clause, and whether petitioner, to its detriment, reasonably relied on contract's cover dates in determining when to file election ptn; Bd must follow its own precedent by excluding extrinsic evidence from its consideration or explain why its rules should be disregarded; ct not allowed to substitute different rationale for that provided by Bd)

4040-3367-3350 Although contract on its face covers all employees

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

4040-3367-6700 Contract held bar where ambiguity limiting coverage resolved by parties' intent and practice

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(Bd will not consider extrinsic evidence to determine if ambiguous contract provisions were intended to have, or in practice had, illegal effects)

4040-5000 Sufficiency of terms

4040-5040 Terms and conditions of employment

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**
(signing of informal agreement covering substantial terms and conditions of employment is sufficient for contract bar purposes even though it was contemplated that contract would be formally executed by parties at later date)

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**
(contract that was intended by parties to cover substantial terms and conditions of employment and initialed by parties barred decertification ptn notwithstanding another document prepared for formal execution which included two provisions not in initialed agreement, also amended vacation pay clause, and which contract E refused to sign because decertification ptn had meanwhile been filed)

4040-6700 Legality of terms

4040-6701 Generally

4040-6701-5000 Construction of terms

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

4050 CHANGED CIRCUMSTANCES WITHIN CONTRACT TERM

4050-3300 Merger of operations

4050-3367 Consolidation of separately located operations

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

6000 PENDENCY OF OTHER PROCEEDINGS

6020 BOARD PROCEEDINGS

6020-5000 Unfair labor practice proceedings

6020-5033 Blocking charges

6020-5033-7500 Dismissal of petition

Carol Estes and 166 Other Warehouse Facility Employees v. N.L.R.B. **No. 78-4068 (D Ct. KS, Jan. 5, 1979 (unreported))**
(application of *blocking charge rule* to decertification ptn during pendency of ULP charges filed by U and Cs issued on behalf of Bd concerning charges, held appropriate, since it was reasonable to assume RD, at time of dismissal of ptn, had some idea whether U's charges were substantial and whether representation election could fairly be held)

8000 UNIT CONSIDERATIONS

8015 INAPPROPRIATE UNIT

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

8020 STABILITY OF UNIT

8020-2000 Representative complement

8020-2025 Appropriateness of election

8020-2025-6700 Fifty percent of job classifications

Whitteman Steel Mills, Inc. **253 NLRB No. 041**
(E found to employ substantial and representative work force where at time of R hearing it employed 54 Ees in 15 job classifications of planned projection of 149 Ees in approximately 36 classifications 4 to 5 months out; furthermore, w/i 30 days of hearing E plans to employ 22 of the additional Ees in 6 additional job classifications; E's plans to expand to 250 in 2 years too indefinite to use to measure substantiality of work force as equipment must be ordered and construction has not started)

California Labor Industries, Inc. **249 NLRB No. 087**
(contract bar to ptn for election where requirement that at least 50 percent of job classifications to be filled at time contract was executed had been satisfied; when contract was executed probationary Ees were performing work which was the equivalent of existence of classifications for *General Extrusion* 121 NLRB 1165, 1167 (1958) purposes, notwithstanding E classified all Ees on payroll as general laborers)

8020-4000 Expanding unit

8020-4025 Appropriateness of election

Whitteman Steel Mills, Inc. **253 NLRB No. 041**
(E found to employ substantial and representative work force where at time of R hearing it employed 54 Ees in 15 job classifications of planned projection of 149 Ees in approximately 36 classifications 4 to 5 months out; furthermore, w/i 30 days of hearing E plans to employ 22 of the additional Ees in 6 additional job classifications; E's plans to expand to 250 in 2 years too indefinite to use to measure substantiality of work force as equipment must be ordered and construction has not started)

8500 JURISDICTIONAL DISPUTES

9000 NO RAID PACTS

355 TYPES OF ELECTIONS

1100 REPRESENTATION

1133 REPEAT

B. E. & K., Inc. **252 NLRB No. 036**
(in event U does not win election because of E's unlawful preelection conduct and interference, election ordered to be set aside and case to be remanded to RD to conduct second election)

2200 SELF-DETERMINATION ELECTION

Pacific Northwest Bell Telephone Company **253 NLRB No. 108**
(self-determination election as to which one of two labor organizations Ees wanted, appropriate, where Ees in newly formed homogeneous group, although equally drawing from membership of the two labor organizations, constituted separate and distinct unit from their previous represented units; Ees were under separate supervision, performed identical duties, and interchanged with one another w/i group, and strong potential for conflicts w/i group existed if Ees remained in former bargaining units)

2201 GENERALLY

2201-5000 Globe doctrine

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

2220 ADDITIONS TO EXISTING UNIT

2220-8000 Voting groups

The Folger Coffee Company **250 NLRB No. 001**
(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P&M Ees and plant clericals; appropriate voting group is one composed of laboratory technicians and unrepresented plant clericals)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

2260 PROFESSIONAL EMPLOYEES IN UNIT WITH NONPROFESSIONAL EMPLOYEES

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(professional Ees given opportunity to vote whether to be included in E-wide unit of community action agency Ees or to be represented separately

Rosemount Center **248 NLRB No. 163**
(separate elections directed in voting groups of nonprofessional and professional Ees at E's child day care facility)

3300 DECERTIFICATION

American Recreation Centers, Inc., d/b/a Mel's Bowl (Hotel & Restaurant Employees, Local 28, AFL-CIO) **250 NLRB No. 142**
(Bd directed decertification election in unit of bartenders at restaurant, where operator leased restaurant part of operation to lessee; even though lessee signed same restaurant association agreement to which lessor was signatory and which included bar and restaurant Ees in same unit, bar and restaurant were operated as independent businesses, and unit was severed when lessor leased restaurant to lessee who independently contracted for restaurant Ees, and U acquiesced in de facto separation of bar and restaurnat Ees)

3350 IN CERTIFIED OR RECOGNIZED UNIT ONLY

Kardon Chevrolet, Inc. **249 NLRB No. 086**
(in decertification proceeding, part-time salesmen excluded from unit of full-time salesmen at auto agency, since parties mutually agreed to modify certified unit to exclude them where, upon original certification, executed contract eliminated any specific reference to part-time Ees; contract specifically prohibited hiring of part-time salesmen and created special status for current part-time salesman, which would not have been necessary if part-time salesmen were included in unit; and E has not hired any part-time salesmen since execution of contract)

4400 DEAUTHORIZATION

5500 EXPEDITED

6600 REMEDIAL

6601 GENERALLY

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

7700 UNIT CLARIFICATION

8800 AMENDMENT OF CERTIFICATION ELECTION

362 ELIGIBILITY TO PARTICIPATE IN ELECTION

3300 DETERMINATIVE PAYROLL PERIOD

3312 ELIGIBILITY ESTABLISHED BY EMPLOYMENT DURING PAYROLL PERIOD IMMEDIATELY PRECEDING DIRECTION OF ELECTION AND ON DATE OF ELECTION

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**

3312-0100 Generally

Gator Products, Inc. **250 NLRB No. 046**
(Ee working at any time during the payroll period satisfies the employment during payroll period aspect of the eligibility test, even if Ee is no longer employed on the last day of the payroll period)

3312-5000 Temporary interruption of work

Gator Products, Inc. **250 NLRB No. 046**
(Ee who worked during payroll period but was not employed on last day of period and who was subsequently reemployed before election date and was on payroll on election date held eligible to vote)

6700 EMPLOYEE TENURE AND STATUS

6701 GENERALLY

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(Bd overruled challenged ballot where Ee, notwithstanding Ee's enhanced responsibilities, was found an agent of E and not a supervisor)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(challenge to Ees' ballots rejected where Ees were found working lead persons and not, as contended, supervisors)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(challenge to Ee's ballot rejected where during period substantially preceding election Ee was not functioning as supervisor w/i meaning of Act)

6703 ELIGIBILITY DETERMINED BY AGREEMENT OF PARTIES

Net Television, Inc., a Wholly Owned Subsidiary of Educational Broadcasting Corporation **252 NLRB No. 088**
(summary judgment denied where RD erroneously refused E's request to withdraw stipulation prior to representation election that Ee was supervisor which E entered into with belief that two other Ees who occupied analogous positions were also supervisors but were determined afterwards not to be supervisors by RD; stipulation did not factually address Ee's actual job duties and authority nor was Ee's status litigated in that regard)

Illinois Valley Community Hospital **249 NLRB No. 058**
(RD properly determined eligibility of individual Ees in question, regardless of parties' agreement, since it is contrary to Act and established Bd policy to agree that a group of Ees, as a class, will not be able to vote when some of those Ees are *prima facie* members of bargaining unit)

Judd Valve Co., Inc. **248 NLRB No. 018**
(issue of eligibility, relating to challenges of voters as supervisors, is to be decided upon facts surrounding such voters' status, rather than upon finality of Norris Thermador agreement)

Judd Valve Co., Inc. **248 NLRB No. 018**
(leadman, whose eligibility was challenged on basis of his supervisory status and even though his name was included in Norris Thermador list, held eligible to vote since he did not possess supervisory authority)

6706 ELIGIBILITY DETERMINED BY TENURE AND STATUS AS EMPLOYEE DURING DETERMINATIVE PAYROLL PERIOD AND ON DATE OF ELECTION

Sylvester's Corp.; d/b/a Gene Sylvester Alarm Co.; et al. **249 NLRB No. 161**
(challenge to ballot of former supervisor overruled where Ee, initially returned to do unit work to complete complex installation but since then has performed on other jobs as well though he has not exercised any supervisory authority whatsover, E has not informed Ees of former supervisor's change in status and installation not yet completed)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ees who did not work on date U demanded recognition because they had been informed of their termination on that day or beforehand not included in unit)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(E's contention that there was mutual mistake of fact as to ending date of payroll period and date inserted in Stipulation for Certification upon Consent Election not grounds for relief because mistake by one party to agreement, where not induced by other falls on party making mistake)

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

6709 VOTING SUBJECT TO CHALLENGE

Liquid Transporters, Inc. **250 NLRB No. 163**
(laid-off drivers permitted to vote subject to challenge where record was inadequate to determine whether such Ees had reasonable expectancy of recall in immediate future)

6712 PART-TIME EMPLOYEES

6712-2500 Regular part-time

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(expert mechanic, veteran Ee, who maintained continuing and on-going relationship with bargaining unit by working 10 hours monthly except for Summer when he worked full time)

Trustees of Tufts College **251 NLRB No. 108**
(to be eligible to vote regular part-time Ee must work at least 21 hours per week and be covered by E's regular benefit program)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(eligible)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(despite Ee's additional maintenance work performed at homes of E's officers and ALJ determination that Ee was domestic, Bd found Ee's ballot valid where Ee performed unit work on regular part-time basis for protracted period of 3 years preceding election and shared community of interest with other unit Ees)

6712-7500 Part-time with regular job elsewhere

Dooley Equipment Corporation **252 NLRB No. 020**
(where Ee worked regularly throughout year before election and received substantial earnings up to election, he was found regular part-time Ee and eligible to vote)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

6718 TEMPORARY EMPLOYEES

Pandick Press Midwest, Inc. **251 NLRB No. 058**
(Ee who worked regular schedule and performed regular duties but did not share in fringe benefits and whose paycheck originated at local office rather than main office of E found not to be temporary Ee as there was no other difference between her terms and conditions of employment and those of other Ees)

6730 CASUAL, EXTRA, OR INTERMITTENT EMPLOYEES

6730-5000 Ineligible

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(casual Ee who did not work regularly, either full or part-time, and who was employed only when E needed him held not eligible to vote in election)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

6736 STUDENT EMPLOYEES

6736-3300 Summer employees considered temporary

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(college student who was hired as temporary Ee, worked only a short period of time, had irregular work hours, and left to return to school, excluded from unit as temporary Ee who, on date of U recognition demand, did not share a community of interest with other Ees)

6736-6700 Part-time employees

Connecticut Foundry Company **247 NLRB No. 145**
(high school student who was daughter of boss and hired when strike commenced and continued employment over summer excluded from voter eligibility where she intended to and did attend college in fall and also in light of fact that she held *special status* at plant due to family relationship)

6766 EMPLOYEES NOT WORKING ON ELIGIBILITY DATES

6766-1000 Laid off

6766-1050 Eligible if reasonable expectancy of reemployment

B. E. & K., Inc. **252 NLRB No. 036**
(laid off Ees eligible to vote where construction project involved and Es' plans envisioned need for hiring of additional Ees in time period subsequent to layoff, reason given for layoff was necessary delay for certain type of work, and at time of layoff E made it clear to Ees that there would be a need for rehiring and that they would be the first to be hired or rehired)

Liquid Transporters, Inc. **250 NLRB No. 163**
(laid-off drivers permitted to vote subject to challenge where record was inadequate to determine whether such Ees had reasonable expectancy of recall in immediate future)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who had been on medical leave and was told there were no openings when he informed E he was able to return to work and had reasonable expectation of reemployment was eligible to vote where E had expressed to individual hope that he would soon return to work and indicated on application form for public aid that firm would rehire him; replacement and termination did not disqualify individual where notification was day after election)

Heatcraft, Division of Lennox Industries, Inc. **250 NLRB No. 021**
(ineligible in instant case where E told Ees layoff was *indefinite* and that they should accept other employment if offered)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(fact that laid off Ees had been referred to as *terminated* in different Bd proceeding immaterial where E had history of recalling former Ees; moreover, fact that these Ees were employed by another E at time of election irrelevant where there was reasonable likelihood of their reemployment)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

6766-2000 Ill

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(Ee not working due to back injury and receiving workmen's compensation held eligible to vote)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who had been on medical leave and was told there were no openings when he informed E he was able to return to work and had reasonable expectation of reemployment was eligible to vote where E had expressed to individual hope that he would soon return to work and indicated on application form for public aid that firm would rehire him; replacement and termination did not disqualify individual where notification was day after election)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ee who was on personal sick leave of absence included in unit where, as of U's recognition demand date, Ee had only been absent 15 weeks, which was not of sufficient duration to make her expectation of reemployment unreasonable; fact that Ee decided not to return to work when her leave of absence terminated is not determinative since E's expectation that Ee would return to work was evidenced by fact that during Ee's leave of absence E carried her on its active payroll and paid her for holidays and vacations)

6766-3000 On leave of absence

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(challenge to ballot of Ee overruled where Ee was not laid off or terminated by E but was on leave whose duration and its extension were not specified by E)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ees who were on leaves of absence for work-related injuries and whose leaves were not of indefinite duration included in unit since they had reasonable expectation of returning to work; Ees' absences of 5, 6, and 10 months held not of such length as to establish that they had no expectation of returning to work, particularly since Ees were collecting workmen's compensation for on-the-job injuries)

Valley Rock Products, Inc. **JD-(SF)-285-79**
(individual on leave of absence held Ee and ballot ordered counted, since no evidence employment relationship severed by positive action, where when applying for leave of absence and at time leave granted individual stated verbally and in writing he intended to return to work after leave, and in letter granting leave E asked to be advised of approximate return date; moreover, individual was never removed from E's rolls and continued to work for E during leave when E was short-handed)

6766-5000 On vacation

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(challenge to ballot on ground Ee was not employed on eligibility date, overruled, where Ee was on vacation during period encompassing eligibility date, and Ee continued to work for some time after election)

6766-6500 On preferential hiring list

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**
(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

6766-7000 Dischargees

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(challenge upheld to ballots of Ees whose discharges prior to election held not unlawful)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(challenge sustained where Ee was not employed by E on date of election and was not determined to be unlawfully discharged)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(challenge to ballots of Ees, overruled, where they had been unlawfully terminated and were challenged on sole ground that their names were not on eligibility list)

Connecticut Foundry Company **247 NLRB No. 145**
(Ee considered by E to be dischargee for picket line misconduct found not to be dischargee and eligible to vote where E never gave Ee any notice that he had been discharged and Ee never took any action to indicate he abandoned his employment)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(Ees held to be unlawfully discharged, eligible, and challenges to ballots overruled)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ees who did not work on date U demanded recognition because they had been informed of their termination on that day or beforehand not included in unit)

6766-8000 Discriminatees

Gordonsville, Industries, Inc. **252 NLRB No. 054**

Dooley Equipment Corporation **252 NLRB No. 020**
(discriminatorily discharged Ee held eligible to vote)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(eligible)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(despite absence of Ees' names on eligibility list, challenges overruled where Ees were unlawfully discharged and therefore entitled to reinstatement at time of election)

Alumbaugh Coal Corporation **247 NLRB No. 112**

6766-8000—Cont.

(discriminatorily terminated Ee, eligible)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**

(challenge to ballot of unlawfully discharged Ee overruled and ballot opened and counted)

Garden State Motors Co. **JD-160-80**

(challenged overruled)

6766-9000 Alleged discriminatees

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

(challenge upheld to ballots of Ees whose discharges prior to election held not unlawful)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**

(Ee not discriminatorilly discharged prior to election not eligible to vote; challenge to his ballot sustained and ballot not counted)

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(Ees unlawfully discharged, eligible)

6772 EMPLOYEES SEPARATED FROM JOBS

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**

(fact that laid off Ees had been referred to as *terminated* in different Bd proceeding immaterial where E had history of recalling former Ees; moreover, fact that these Ees were employed by another E at time of election irrelevant where there was reasonable likelihood of their reemployment)

6772-6700 Who have or intend to quit

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who had voluntarily quit to avoid loss of social security benefits not eligible)

Connecticut Foundry Company **247 NLRB No. 145**

(Ee who quit his job prior to joining strike and prior to eligibility date not entitled to vote notwithstanding he picketed up until date of election)

6775 EMPLOYEES ON ASSIGNMENT TO NONUNIT JOBS

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

EMPLOYEES HAVING JOB-RELATED CHARACTERISTICS DISTINCT FROM UNIT EMPLOYEES

B. E. & K., Inc. **252 NLRB No. 036**

(expediter at construction project, classified as journeyman millwright, held eligible to vote in millwright unit election in view of community of interest with unit Ees' despite wearing of distinctive headgear and his travels over many areas of project unlike millwrights who are located in one work section at a time, and his work was closely related to and integrated with millwrights' work)

6778 STRIKERS

6778-6700 Economic strikers

6778-6733 Replaced economic strikers eligible in election within 12 months after commencement of strike

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**

(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

Prairie Glove Division, Advance Glove Company **JD-164-80**

(where representation questions arose from E's unilateral withdrawal of recognition from incumbent U, Ees still on economic strike when recognition was withdrawn held part of the bargaining unit for purposes of selecting representation more than 12 months after commencement of strike, absent evidence indicating that the striking Ees had ever been permanently replaced)

6778-6767 Acceptance of new employment

6778-6767-5000 Eligible unless old job abandoned

Connecticut Foundry Company **247 NLRB No. 145**

(Ee who found another job because he refused to cross picket line, held job over 1 year and made no attempt to regain old job after picket line was removed found to have abandoned first job and ineligible to vote)

6778-6798 Abandonment of interest in job

Connecticut Foundry Company **247 NLRB No. 145**

(Ee considered by E to be dischargee for picket line misconduct found not to be dischargee and eligible to vote where E never gave Ee any notice that he had been discharged and Ee never took any action to indicate he abandoned his employment)

6784 REPLACEMENTS FOR STRIKERS

6784-3300 For ULP strikers

6784-3350 Not eligible

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

6796 PART-TIME OR TEMPORARY SUPERVISORS

6796-5000 Eligible regardless of employee status at time of election

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**

(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

6798 RELATIVES OF MANAGEMENT

Connecticut Foundry Company **247 NLRB No. 145**

(high school student who was daughter of boss and hired when strike commenced and continued employment over summer excluded from voter eligibility where she intended to and did attend college in fall and also in light of fact that she held *special status* at plant due to family relationship)

6798-2500 Relationship to management

Pandick Press Midwest, Inc. **251 NLRB No. 058**

(daughter of plant manager who also has title of *president* not eligible to vote in election and excluded from unit where she lives at home with her father, has more flexible shift schedule than other Ees and her easy access to management gives her status and area of interest distinct from other Ees)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**

(contention that sons, herein excluded from unit, were not employed by their father but by partnership entity owned by father and partner, and that prior Bd decision required GC to prove sons' *special status* for their exclusion, rejected; cited decisions do not relate to issue herein but primarily to Ees of corporations, Congress has definitively excluded child of owner from status of *Ee*, and father herein, sole operator of partnership because of partner's illness, was directly responsible for day-to-day operation of partnership's business)

Han-Dee Pak, Inc. **249 NLRB No. 107**

(challenge to ballot sustained where Ee was son of VP and 50 percent stockholder of E and, thus, deemed employed by his parent and excluded from Ee unit because of relationship to substantial owner)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(son of plant manager, who was college student hired as temporary Ee, excluded from unit where he enjoyed special status in employment relationship in view of higher pay, irregular work hours, and ease with which he was rehired; and it was most likely that he was not financially independent from his father whose influence would tend to predispose son to follow management views and ally him with management)

6798-7500 Circumstances of employment

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**

6798-7500—Cont.

(challenge to ballot of Ee who was relative of official rejected, where no evidence was adduced that such relationship caused any special treatment of Ee or that Ee functioned other than as rank-and-file Ee in job w/i voting unit)

370 MECHANICS OF ELECTION

0100 GENERALLY

0700 DATE OF ELECTION

0750 FACTORS CONSIDERED IN DETERMINING WHETHER OR NOT TO POSTPONE ELECTION

0750-8400 Unfair labor practice charges pending

0750-8467 Not postponed

0750-8467-3300 Waiver of right to object

Connecticut Foundry Company **247 NLRB No. 145**
(E who signed agreement in which U agreed that *We will not restrain or coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* (not conventional request to proceed) waived its rights to have election set aside due to ULP's which were part or could have been part of settlement agreement it entered into with U, thereby enabling election to take place before end of posting period, effectively waived its right to protest U's ULP's committed prior to execution of agreement)

1400 PLACE OF ELECTION

2100 TIME OF ELECTION

2800 NOTICE OF ELECTION

2833 RECEIPT OF NOTICE

2833-5000 Timely receipt

2833-5050 Length of time posted

Contractors Redi-Mix, Inc. **250 NLRB No. 022**
(certification of election results rather than rerunning election, held warranted notwithstanding E's objection that election notice was not posted until the day before election; E contributed to the delay by failing to post the notice until 3 days after receiving it; Ees had opportunities prior to election to read the notice; parties independently apprised Ees of details of election arrangements; and all active Ees voted)

Associated Air Freight, Inc. **247 NLRB No. 158**
(where E delayed posting of notices until day after receipt thereof, even assuming *arguendo* that posting took place in morning rather than later in day, such late posting, only 2 days before election, failed to give Ees sufficient advance notice of election in view of their various different work schedules, and constituted substantial disregard of posting instructions; *Printhouse* case not controlling)

2850 DEFACED NOTICE

2850-6700 Marked sample ballot

2850-6733 For nonunion choice

Armstrong Cork Company **150 NLRB No. 147**
(*altered sample ballot* distributed by E to Ees on day and evening before election, held objectionable, since E's use of *altered Bd ballot* created impression that Bd had allied itself with E's (anti-U) campaign)

2867 FAILURE TO CONDUCT ELECTION IN ACCORDANCE WITH NOTICE

2867-2500 Change of time

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **251 NLRB No. 119**
(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertent and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did not cast ballots)

3500 VOTING PROCEDURE AND ELECTION FACILITIES

3533 VOTING PROCEDURE

3533-4000 Identification of voters (includes use of eligibility list)

3533-4050 Use of eligibility list

Illinois Valley Community Hospital **249 NLRB No. 058**
(RD properly determined eligibility of individual Ees in question, regardless of parties' agreement, since it is contrary to Act and established Bd policy to agree that a group of Ees, as a class, will not be able to vote when some of those Ees are *prima facie* members of bargaining unit)

3533-7000 Failure to vote

3533-7001 Generally

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **251 NLRB No. 119**
(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertent and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did not cast ballots)

4200 BALLOT

4270 USE OF FOREIGN LANGUAGE BALLOT

Flo-Tronic Metal Mfg., Inc. **251 NLRB No. 205**
(failure to include in election notice full statement of rights of Ees in both English and Spanish as agreed to by parties, held interference notwithstanding that information with respect to date, time and place of polling, eligibility requirements, and type of ballot to be used was posted both in English and in Spanish)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(support of U was *clearly manifested* in instant case where challenged ballots of two of E's 15 Spanish speaking Ees were marked *si* in *YES-SI* box rather than in *NO-NO* box; Bd properly counted those challenged ballots as votes in favor of U)

4900 OBSERVERS

4925 APPROPRIATENESS OF INDIVIDUAL AS OBSERVER

4925-0100 Generally

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**
(where U designated as official observer w/o his consent Ee who was considered to be anti-U, and U won election by 1 vote, ct denied Bd hearing on E's objections to elections and enforced Bd order as this is not type of practice which impairs validity of election and Ee made effort to counteract inference that his designation demonstrated support for U)

4962 FUNCTIONS AND RESPONSIBILITIES OF OBSERVERS

4962-2000 Challenge voters

Monterey Carmel Convalescent, Inc., d/b/a Carmel Convalescent Hospital **252 NLRB No. 041**
(objection that Bd agent failed to adequately instruct U's observer at voting session on proper challenge procedures which thereby caused observer to believe failure or refusal to initial voter's name on eligibility list constituted challenge of that voter overruled, it is well settled that an observer should indicate clearly intent to challenge, and that in absence of such clarity, particularly when question is specifically asked by Bd agent, as here, and there is no affirmative response, Bd agent cannot reasonably be expected to interpret observer's conduct as conveying intent to challenge)

4962-8000 Certificatin of conduct of election

Keystone Metal Moulding Company **249 NLRB No. 075**

4962-8000—Cont.

(failure of Bd agent to have observers sign certification of conduct form until after second voting session not sufficient departure from normal procedure to raise reasonable doubt as to fairness and validity of election)

4975 CONDUCT OF OBSERVER

4975-2500 Maintaining voter list

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(setting aside of election not warranted where U observer had Ee voting list and may have briefly compared his list to official list of those who had voted since he could have recorded only small number of those who voted and this occured during period of time when no eligible voters in voting area; thus coercive atmosphere not created)

4975-5000 Electioneering

The Nestle Company **248 NLRB No. 106**
(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**
(U observer's statement *come on and vote, exercise your power* said to Ees in room adjacent to balloting area, not objectionable and not *electioneering*, since statement was not one that can be said to have inhibited Ees' free choice in selecting their representative)

5600 CHALLENGE OF VOTER

6300 MAIL BALLOTING

7000 SECRECY OF BALLOT

7001 GENERALLY

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(if Ee would have helped non-English speaking Ee to vote it would be clearly inappropriate because Bd's requirement of complete secrecy of ballot (in elections) cannot be waived)

7033 NATURE OF VOTING CONDITIONS RAISING QUESTION OF OPPORTUNITY TO CAST SECRET BALLOT

7033-6700 Voting facilities in voting area

7033-6733 Polling booth

7033-6733-3300 Employees occupying booth at same time

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(if Ee would have helped non-English speaking Ee to vote it would be clearly inappropriate because Bd's requirement of complete secrecy of ballot (in elections) cannot be waived)

7067 IDENTITY OF VOTER

7067-9000 Waiver

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(if Ee would have helped non-English speaking Ee to vote it would be clearly inappropriate because Bd's requirement of complete secrecy of ballot (in elections) cannot be waived)

7700 COUNT

7725 VALIDITY OF BALLOTS

7725-0100 Generally

San Joaquin Compress & Warehouse Company **251 NLRB No. 007**
(in invalidating ballot where intent of voter was unclear because of irregular markings on ballot, Bd stated that it did not intend to make presumption that intent is unclear whenever irregularity in marking occurs; rather, its holding was that markings herein made it impossible to conclude what voter meant where markings were in one box and were thoroughly confusing)

7725-5000 Intent of voter

7725-5033 Mark other than x used to designate choice

N.L.R.B. v. A. G. Parrott Company **630 F.2d 212 (C.A. 4, 1980)**
(*Yes* ballot marked with a *C* held to have been properly counted in favor of U since marking did not in any way reveal identity of Ee who cost ballot, and voting preference was clear)

7725-5050 Wording or lettering on ballot

San Joaquin Compress & Warehouse Company **251 NLRB No. 007**
(ballot marked in pencil with *X* or checkmark and additional random markings in *No* box, with no markings in *Yes* box, invalid, since ballot does not disclose intent of voter with required degree of certainty; deciding whether voter had decided to make *no-choice* by obliterating mark in *No* box or merely intended emphasis by darkening whatever mark had been made originally in *No* box would have been mere speculation)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(support of U was *clearly manifested* in instant case where challenged ballots of two of E's 15 Spanish speaking Ees were marked *si* in *YES-SI* box rather than in *NO-NO* box; Bd properly counted those challenged ballots as votes in favor of U)

7725-5083 Miscellaneous markings on ballots other than lettering

7725-5083-6700 Ambiguous - void

San Joaquin Compress & Warehouse Co. (Local 78, Longshoremen's and Warehousemen's Union) **250 NLRB No. 007**
(challenge to ballot marked in pencil with what appeared to be an *X* or checkmark and random additional markings in *No* box and no markings in *yes* box, overruled and ballot declared void as it does not disclose intent of voter with required degree of certainity)

7725-6700 Identification of voter on ballot

N.L.R.B. v. A. G. Parrott Company **630 F.2d 212 (C.A. 4, 1980)**
(signed ballot, decisive of outcome of election which, through Bd agent's inadvertent error, revealed voter's *No* choice required setting aside of election and direction of new election, where Bd denied E right, generally granted, to see signature thereby requiring E to accept, in blind faith, Bd's conclusion that ballot bore an invalidating signature and to abandon protection of inspection otherwise routinely available; E should not bear unfavorable consequences where Bd agent was at fault, and Bd's injustice to E would be equally unjust to U if *No* ballot were counted)

7750 BALLOTS OF CHALLENGED VOTERS

7750-0100 Generally

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(setting aside election not warranted notwithstanding provisions of N.L.R.B. Casehandling Manual were not precisely followed where Bd agent did not seal envelopes containing challenged ballots with tape, there was no label with name of person who sealed envelope, and no memo placed in file stating where challenged ballots were stored, since Bd secured and safeguarded ballots)

8400 MAJORITY CONCEPT UTILIZED BY BOARD

8467 MAJORITY CONSISTS OF MORE THAN HALF WHO CAST VALID BALLOTS

8467-0100 Generally

The Nyack Hospital **248 NLRB No. 043**
(where there are three choices on ballot and none receives majority, election is inconclusive)

9100 ROLE OF BOARD AGENT

9133 PERSONAL CONDUCT

9133-3300 Bias

9133-3350 Fraternization with party to election

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(Bd agent's casual conversation with Uobserver at election not objectionable where no voter was present during conversation, all observers had already voted and remarks could not have affected outcome of election)

9133-3367 Statements

N.L.R.B. v. Allen's I.G.A. Foodliner **633 F.2d 217(T) (C.A. 6, 1980)**
(Bd agent's comment to E observer that *if Ees had been treated right she would not be there holding election* was improper but not prejudicial where no voters were present in polling place at time remark was made, most voters had cast their ballots, and there was no evidence in the record that agent's remark was relayed to any voter who had not yet cast his/her ballot)

9167 FUNCTIONS AND RESPONSIBILITIES

9167-4800 Opening of polls

9167-4850 Late

Jobbers Meat Packing Co. Inc. **252 NLRB No. 008**
(notwithstanding that one eligible voter was disenfranchised as result of Bd agent's unavoidably opening polls two hours later than scheduled, U was certified and election results not set aside after tally of ballots showed 11 for and seven against U with one challenged ballot, since votes of challenged ballot and excluded voter would not have been determinative of election even if both had voted against U)

9167-8100 **Challenge procedure**

9167-8101 Generally

Monterey Carmel Convalescent, Inc., d/b/a Carmel Convalescent Hospital **252 NLRB No. 041**
(objection that Bd agent failed to adequately instruct U's observer at voting session on proper challenge procedures which thereby caused observer to believe failure or refusal to initial voter's name on eligibility list constituted challenge of that voter overruled; it is well settled that an observer should indicate clearly intent to challenge, and that in absence of such clarity, particularly when question is specifically asked by Bd agent, as here, and there is no affirmative response, Bd agent cannot reasonably be expected to interpret observer's conduct as conveying intent to challenge)

9167-8200 **Handling challenged ballots**

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(setting aside election not warranted notwithstanding provisions of N.L.R.B. Casehandling Manual were not precisely followed where Bd agent did not seal envelopes containing challenged ballots with tape, there was no label with name of person who sealed envelope, and no memo placed in file stating where challenged ballots were stored, since Bd secured and safeguarded ballots)

9167-8800 **Closing of polls**

National Medical Hospital of Compton, d/b/a Domiquez Valley Hospital **251 NLRB No. 119**
(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertant and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did not cast ballots)

9500 UNION AFFILIATION AND DISAFFILIATION ELECTIONS

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(election purporting to affiliate Ee committee and its constituent Ees with international U held ineffective and void where voting violated all principles of fair election inasmuch as there was no voting list or record kept of who received ballots, and who voted, and there was no assurance that ballots represented votes of legitimate voters; and on day following voting, after ballots had been counted, Ee, who was mots active in promoting affiliation, handed in two ballots purporting to be vote of other Ees, who apparently voted in favor of affiliation and broke election's tie vote)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(election purporting to affiliate Ee committee with international U held ineffective and void since it was conducted in violation of minimal standards of democratic procedure or due process, where no notice was given Ees, advising them of meeting for conducting vote; no opportunity was allowed for discussion among Ees on merits of affiliation; majority of Ees had been informed that they were not voting on affiliation with international but on whether they wanted to hear about it; and there was lack of safeguards against rigged or otherwise unfair election)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(valid affiliation election held not to create new labor organization nor does it result in dissolution of existing labor organization, and agreement between affiliating U and E remains effective until its stated expiration date; in case of void affiliation election, it is even more obvious that such election and any derivative actions do not dissolve pre-existing labor organization or its contract with E)

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**
(in vote to affiliate with International fact that vote was not secret or that votes not held in individual bargaining units does not negate validity of affiliation election)

378 CONDUCT INTERFERING WITH ELECTION CHOICE

0100 GENERALLY

0160 ISOLATED CONDUCT

United Broadcasting Company of New York, Inc. **248 NLRB No. 065**

(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner*, nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

0170 CONDUCT MUST AFFECT EMPLOYEES IN UNIT VOTING

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

(contention that unlawful wage increase granted to Ees of E constituting single integrated enterprise with another E cannot serve as basis for setting aside election among latter E's Ees, rejected, since wage increase was likely to have impacted on second E's Ees where there was substantial Ee interchange between relatively small groups of Es' Ees, and second E's drivers made deliveries for, and were paid by, both Es)

0180 TIMING OF CONDUCT

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**

(evidence of misconduct occurring before filing of representation ptn will not be considered by Bd)

0180-1700 Remote in time

Maywood, Inc. **251 NLRB No. 139**

(while agreeing with ALJ's finding that under *Dressler Industries, Inc.*, 231 NLRB 591, E's prepetition ULPs may be considered insofar as they lend meaning and dimension to related post-petition conduct, Bd declined to adopt her further finding that under *Dressler Industries* E's unlawful prepetition conduct may be considered as valid grounds for setting aside election as there are no circumstances here to warrant departure from rule of *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275)

0180-3300 Critical period

Lippincott Industries, Inc. **251 NLRB No. 034**

(election ordered set aside where E's ULPs w/i critical period involved interrogation of Ee and unlawful discharge of U adherent 3 hours before election in which U lost by one vote)

Moody Nursing Home, Inc. **251 NLRB No. 022**

(truthfull written propoganda concerning U dues distributed along with paychecks on election day not violative as only content of material is relevant to effect on election, not timing)

Ashcraft's Market, Inc. **251 NLRB No. 025**

(E's announcement of dental plan during critical pre-election period did not warrant setting election aside, since decision regarding plan was made outside critical period and E followed usual custom of announcing benefit changes at Christmas party and putting change into effect on or about January 1)

Marconi, Inc., d/b/a El Caballo **251 NLRB No. 009**

(pre-election threat made by pro-U supervisor, objectionable, where supervisor still occupied his supervisory position and at time of election was in position to thrust his pro-U sympathies onto Ees and to implement his threat)

Armstrong Cork Company **150 NLRB No. 147**

(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*--- concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) **250 NLRB No. 133**

(discharge violative of 8(a)(3) held not objectionable conduct where it occurred prior to filing of representation ptn)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) **250 NLRB No. 133**

(ten-percent wage increase, which was not provided for and not outgrowth of wage survey initiated before U activities began but was granted after U activities began and one week before election, violative and objectionable conduct)

The Nestle Company **248 NLRB No. 106**

(while E's conduct before and after initial and runoff elections was called into question by ULP charges, it is only conduct occurring between the two elections which may properly be considered in regard to objections to runoff election)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(bus service provided by E to its Ees week before election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

0180-6700 Cut-off date

Blue Bird Body Company **251 NLRB No. 196**

(prepetition conduct may be considered in determining whether party has engaged in objectionable conduct where such prepetition conduct lends *meaning and dimension* to post-election conduct)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**

(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

1400 STANDARD FOR ELECTION CONDUCT

1401 GENERALLY

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**

(Bd has wide discretion in setting standards for conduct of representation elections and its rulings on effect of particular campaign practices will be set aside only if they are in an abuse of discretion)

1401-2500 ULP conduct a fortiori interference with election

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

(discriminatory layoff)

Han-Dee Pak, Inc. **249 NLRB No. 107**

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**

Lyman Steel Company **249 NLRB No. 040**

(ULPs during critical period between date of first election and date of rerun election)

Cardinal Heating and Cooling, Inc. **JD-835-79**

(election set aside due to conduct constituting ULPs during pendency of representation ptn)

1401-5000 'Laboratory conditions' standard

Weyerhaeuser Company **247 NLRB No. 147**

(proper standard in cases involving objections to conduct affecting results of election is whether the conduct reasonably tends to interfere with Ee's freedom of choice in election)

1401-6700 Conduct objectionable which may reasonably be expected to have significant impact on election

Jobbers Meat Packing Co. Inc. **252 NLRB No. 008**

(notwithstanding that one eligible voter was disenfranchised as result of Bd agent's unavoidably opening polls two hours later than scheduled, U was certified and election results not set aside after tally of ballots showed 11 for and seven against U with one challenged ballot, since votes of challenged ballot and excluded voter would not have been determinative of election even if both had voted against U)

National Medical Hospital of Compton, d/b/a Domiquez Valley Hospital **251 NLRB No. 119**

1401-6700—Cont.

(where U distributed pamphlets to E's Ees comparing their wage rates with those of Ees in county (public) hospitals and in private hospitals and misrepresented to Ees that U had negotiated both public and private hospitals' contracts, when in fact, had negotiated only private hospitals' contracts, Bd dismissed objection as private hospital pay rates were substantially higher than pay rates cited at public hospitals and, therefore, Ees would not have been induced to vote for U because of lower rates at public hospital)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(discouraging Ee from voting warranted sustaining U's objection and directing second election)

United Broadcasting Company of New York, Inc. **248 NLRB No. 065**
(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner*, nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(in refusing to remand case so RD could conduct new investigation under stricter *Hollywood Ceramics* standards, ct noted that RD found relevant objections had no merit even under *Hollywood Ceramics* (in footnote) and Bd ruled on E's appeal applying explicitly *Hollywood Ceramics* and *General Knit*, assuring itself that RD had considered stricter standard with full vigor)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(representation election may be set aside only if objectionable activities, when considered as whole, either tended to or did influence outcome of election)

N.L.R.B. v. Gulf States Canners, Inc. **598 F.2d 896 (C.A. 5)**
(*in determining whether election should be invalidated focus should be on effects of particular act on electorate rather than on actor's intent*; test objective rather subjective, and determination should be based on all relevant facts)

N.L.R.B. v. Sara Knoca, a sole proprietor d/b/a Clio Convalescent Center **633 F.2d 217(T) (C.A. 6, 1980)**
(ct held omission in campaign letter respecting dietary aides and cooks could not have had effect of misleading those Ees as to their rights to participate in election, particularly in view of other notices which were plainly posted throughout facility and in view of absence of any evidence that such Ees were, in fact, misled)

1401-6750 De minimis impact of conduct

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(sole ULP established w/i post-ptn period not de minimis since pre-ptn misconduct of twice threatening Ee with plant closure and same Ee victim of post-ptn ULPs added meaning and dimension to related post-ptn conduct)

Flagler Memorial Park **247 NLRB No. 204**
(U's furnishing E fragmentary copy of U's constitution, even if it constituted substantial misrepresentation, not basis for setting aside election, where there was no showing that alleged misrepresentation was material to issue of whether Ees wanted U as their bargaining representative, and E was aware of the misrepresentation almost a month before the election)

1401-7100 Subjective understanding of remarks not competent evidence

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(rumor that U adherent *brandished a gun at anti-U Ees after receiving an anti-union handbill* held false rumor of threat of violence, and even if Ees believed U adherent was pointing gun at them their subjective reactions were irrelevant to question of objectionable conduct)

1700 ABUSE OF BOARD PROSESSES

2100 SPEECHES TO MASSED EMPLOYEES WITHIN 24 HOURS OF ELECTION (PEERLESS PLYWOOD RULE)

Land O'Frost of Arkansas, Inc. **252 NLRB No. 001**
(where supervisors on day of election visited half of eligible Ees at their work stations, urged them to vote and said that if they were undecided a *no* vote would be appreciated, did not violate Act as this conduct did not amount to speech to massed Ees within 24 hours of election)

Moody Nursing Home, Inc. **251 NLRB No. 022**
(does not prohibit right of any party to circulate campaign literature, on or off premises during critical 24-hour period prior to election)

2800 CONDUCT OF EMPLOYER

2801 GENERALLY

2801-3300 Protections of Section 8(c) of Act

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E's distribution of letters to Ees prior to decertification election in which it urged Ees to consider what would be best for them and their families, stated election would be carefully conducted by Bd, sought to assure Ees regarding job security, not violative, since contained neither promises of benefits nor threats of reprisals and did not warrant setting election aside)

2816 ADDRESSING OR INTERVIEWING EMPLOYEES

2816-2500 Statements to employees individually or in groups

Land O'Frost of Arkansas, Inc. **252 NLRB No. 001**
(where supervisors on day of election visited half of eligible Ees at their work stations, urged them to vote and said that if they were undecided a *no* vote would be appreciated, did not violate Act as this conduct did not amount to speech to massed Ees within 24 hours of election)

2824 INTERROGATION

B. E. & K., Inc. **252 NLRB No. 036**
(E's preelection conduct in asking Ees how they were going to vote and why they felt they needed U, unlawful and interference, where there was no evidence that there existed, or that Ees were advised of, a legitimate need or purpose for such interrogation, or that Ees were given assurances of nonreprisals concerning such interrogation)

Maremont Corporation, World Parts Division **251 NLRB No. 110**
(supervisor's distributing pro-company hats with *vote no* buttons on them to Ees shortly before election, held an unlawful interrogation of Ees concerning their U membership, activities, and desires, and also an interference with election)

Maywood, Inc. **251 NLRB No. 139**

Industry Products Company **251 NLRB No. 183**

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by interrogation of Ee about her signing U card by nonsupervisory Ee whom Ees could reasonably believe to be speaking for management)

Forcum-Lannom Associates, Inc. (Carpenters Union No. 978) **248 NLRB No. 067**
(objection to single interrogation of Ee overruled where he was found to be nonunit Ee and interrogation thus not to have impacted on free choice of unit members)

Paceco, A Division of Fruehauf Corporation **247 NLRB No. 166**
(on remand Bd adhered to finding of unlawful interrogations during critical period based on timing of interrogations and lack of evidence of valid purpose for questioning Ees on U sentiments)

2827 SOLICITATION OF GRIEVANCES

Moody Nursing Home, Inc. **251 NLRB No. 022**

Liberty Vinyl Corporation **JD-(SF)-268-80**
(soliciting grievances at meetings during U campaign with labor relations consultant and interpretor not violative, where consultant gave general disclsimer that he had no power to correct grievances but would pass them to management and E, who had held previous meetings where Ees were invited to discuss problems and make recommendations, did not deviate from past practices)

2829 SOLICITATION OF OPPOSITION TO UNION

Maywood, Inc. **251 NLRB No. 139**
(telling newly-hired Ee that Ees in her department were not for U and did not sign authorization cards, interference)

2832 DISCRIMINATORY TREATMENT OR THREAT THEREOF

B. E. & K., Inc. **252 NLRB No. 036**
(E's preelection response to Ees complaints about wages that they did not have to stay, that *it could be a lot worse* because they could be getting nothing, and that if they did not like state's low pay scales they could get out of state held unlawful implied threat of loss of jobs and interference with election)

B. E. & K., Inc. **252 NLRB No. 036**
(objection that E threatened apprentices with nonprogression if U won election, overruled, where E's statements compared its ratio of apprentices

2832—Cont.

to journeymen to ratio in U's contracts with other Es, and such statements were not to be construed as expected acts of reprisal but rather as what Ees could expect if U secured contract with E)

Maywood, Inc. **251 NLRB No. 139**
(stripping Ee of his leadperson duties in retaliation against him for his U sympathies and activities held interference)

Maywood, Inc. **251 NLRB No. 139**
(E's assigning more onerous work to Ees in retaliation for their U activities held interference)

Maywood, Inc. **251 NLRB No. 139**
(threatening to find excuse to discharge Ee because of his U activities held interference)

Maywood, Inc. **251 NLRB No. 139**
(statement that if Ees got U in *all benefits including profit sharing and incentive would be dropped* and Ees would be *dropped back to the minimum wage.* held interference)

Maywood, Inc. **251 NLRB No. 139**
(discharge of Ees because of their U activities and sympathies, interference)

Maywood, Inc. **251 NLRB No. 139**
(transfer of U leader to less desirable job assertedly in interest of increasing production, interference, where her pre-transfer job was reassigned to less-experienced person, E was hostile to U adherents, and transfer came about next working day after she testified for U under subpoena at hearing in RC-case)

Industry Products Company **251 NLRB No. 183**
(unlawful discharge)

McLane/Western, Inc. **251 NLRB No. 185**
(violation and interference where E was discharged, allegedly for breach of no-stealing rule by eating one cracker from damaged, unsalvageable carton, since E applied the rule in retaliation for Ee's suspected U support and as warning to other Ees)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Armstrong Cork Company **150 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*— concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

Patsy Bee, Inc. **249 NLRB No. 125**
(election set aside where E's ULPs interfered with holding of free and fair election)

Krafcor Corporation **JD-259-80**
(preelection speech threatening Ees with more severe discipline if they selected U as their representative, including examples referring to Ees in context of incidents for which they would be discharged, held unlawful and election set aside)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**
(supervisor's stating on election day that *after today probably everybody will be standing in the unemployment line,* or that *after today probably none of us will be working here any more,* held not threat of plant closure because of Ee U activity; at most, the statement constituted prediction or warning of unemployment w/o regard to outcome of election)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**
(supervisor's stating, in answer to Ee's question as to what would happen if U won election, that *whatever way it goes, we'll all be out of work,* that they would both be out of a job, that *it would all be over with,* or that *whatever way it goes it will all be over with,* held not threat of discharge or plant closure if U won election; at most the statement indicated either that there would be more loss of jobs regardless to outcome of election, or that campaign would be over once election took place)

2835 PREDICTION OF DETRIMENTAL RESULTS OF UNIONIZATION

North American Car Corporation **253 NLRB No. 128**
(informing Ees two days before election that their benefits exceeded those of U Ees and that they were receiving *special treatment* but if they voted for U *you'll simply be considered another U shop,* that everything was subject to renegotiation, and that in case of strike they could be permanently replaced warranted setting election aside; notwithstanding E subsequently explained that wages and benefits would be determined by bargaining, since statements viewed as total course of conduct emphasized E's control over Ees' economic status and futility and hazards of selecting U)

Armstrong Cork Company **150 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*— concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

General Dynamics Corporation **250 NLRB No. 096**
(violation where E's total campaign propoganda including posters, handbills, and captive audience speeches gave impression of futility of bargaining, and likelihood of strikes, violence, plant closings and job loss)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(E's leaflet in form of obituary dealing with closing of nearby plant and E's preelection speeches held interference, where evidence did not support E's message that unionization caused closure of other area plants or that unionization would lead to strikes, plant closure, job loss, and other unidentified disasters, and E thereby failed to convey permissible noncoercive prediction that unionization might lead to economic dispute that could result in loss of jobs; Ees take hints of plant closing as coercive threats rather than honest forecasts)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(editorial printed in local newspaper on day of election which predicted plant would close if U won election found to reinforce E's prior threats of plant closings and warrants issuance of bargaining order)

2837 SHOWING MOTION PICTURE MOVIES, SLIDE PRESENTATIONS, ETC.

Sab Harmon Industries, Inc. **252 NLRB No. 132**
(showing of anti-U film *The Springfield Gun* did not warrant setting aside election, absent evidence of U animus or ULPs on part of E)

2839 WAGE INCREASES AND OTHER BENEFITS, OR PROMISES THEREOF

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) **250 NLRB No. 133**
(implementation and announcement of improved retirement plan held not unlawful or objectionable conduct where plan was developed and adopted prior to beginning of U activities with timing of its announcement determined by economic, not U-related matters)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(bus service provided by E to its Ees week before election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

N.L.R.B. v. Tio Pepe, Inc. **629 F.2d 964 (C.A. 4, 1980)**
(ct denied enforcement of bargaining order and remanded case to Bd for evidentiary hearing on two issues advanced in E's mtn to reopen record since E made sufficient *prima facie* factual showing of after-discovered evidence that *captains* had promised other dining room Ees that, if U won, captain's distribution of pooled tips would be adjusted in their favor, which, if sustained later at full hearing, would undermine Bd's reasons for its denial of supervisory status for *captains* in unit of dining room Ees and further significantly affect election by way of monetary inducement for U support)

2839-1700 Statements concerning benefits

Ashcraft's Market, Inc. **251 NLRB No. 025**
(E's announcement of dental plan during critical pre-election period did not warrant setting election aside, since decision regarding plan was made outside critical period and E followed usual custom of announcing benefit changes at Christmas party and putting change into effect on or about January 1)

2839-3300 To unit employees

2839-3333 Preceding election

North American Car Corporation **253 NLRB No. 128**
(informing Ees two days before election that their benefits exceeded those of U Ees and that they were receiving *special treatment* but if they voted for U *you'll simply be considered another U shop,* that everything was subject to renegotiation, and that in case of strike they could be permanently replaced warranted setting election aside; notwithstanding E subsequently explained that wages and benefits would be determined by bargaining, since statements viewed as total course of conduct emphasized E's control over Ees' economic status and futility and hazards of selecting U)

2839-3333—Cont.

Maywood, Inc. **251 NLRB No. 139**
(grant of wage increases prior to election, not interference where changes in wages and benefits conformed with past practice and were motivated by business considerations and not designed to defeat U in Bd election)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E's distribution of letters to Ees prior to decertification election in which it urged Ees to consider what would be best for them and their families, stated election would be carefully conducted by Bd, sought to assure Ees regarding job security, not violative, since contained neither promises of benefits nor threats of reprisals and did not warrant setting election aside)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(reinstatement of more favorable sick leave policy to induce Ees to withdraw support from U constituted interference and violation)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(reinstatement of more favorable sick leave policy to induce Ees to withdraw support from U constituted interference and violation)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

2843 DENIAL OR WITHHOLDING OF WAGE INCREASE OR OTHER BENEFITS, OR THREATS THEREOF

North American Car Corporation **253 NLRB No. 128**
(informing Ees two days before election that their benefits exceeded those of U Ees and that they were receiving *special treatment* but if they voted for U *you'll simply be considered another U shop*, that everything was subject to renegotiation, and that in case of strike they could be permanently replaced warranted setting election aside; notwithstanding E subsequently explained that wages and benefits would be determined by bargaining, since statements viewed as total course of conduct emphasized E's control over Ees' economic status and futility and hazards of selecting U)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(statement implying that Ees would lose insurance coverage paid for by E if U were certified, unlawful and interference)

BRK Electronics (Electrical Workers, Local Union No. 461) **248 NLRB No. 169**
(E president's failure to explain, in direct response to Ee questions, that election of U would not automatically result in loss or suspension of regularly scheduled vacation benefits warranted setting aside election, since president's failure would tend to create in minds of Ees doubt and uncertainty where none need have existed)

The Marley Heat Transfer Company **JD-(SF)-263-80**
(no violation where E who recently purchased plant promised that new wages and benefits package would take effect on certain date but before election told Ees that if U won, E would negotiate with U concerning wages and benefits, where E's package was *discretionary* and amount had not been determined before advent of U or election)

2843-5000 Placing onus for withholding on union

Armstrong Cork Company **150 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*--- concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

2847 RULES RESTRICTING UNION ACTIVITY (See also 512-5012)

2847-3300 No distribution, no solicitation

Industry Products Company **251 NLRB No. 183**

2847-5000 Restriction on use of bulletin board

Axelson, Inc., Subsidiary of U. S. Industries, Inc. **251 NLRB No. 044**
(decertification election not set aside notwithstanding Ees' claim that campaign conditions were unfairly tilted in U's favor where E's restriction on Ees' right to post literature in certain nonworking areas was impliedly directed to U, U made no attempt to post or distribute literature on company property, Ees took full advantage of distributing literature in non-restricted areas as well as inadvertant distribution in restricted areas, and E conducted its own campaign in support of Ees' position)

2847-6700 Restriction of employees' meetings or movements within plant

Sherwood-Trimble Medical Building **247 NLRB No. 160**
(requiring U adherent to take breaks at specified times and restricting U adherent to her desk and restricting others as well to disguise restriction of U adherent)

2847-6800 Restriction of employees' access to plant while off duty

Maywood, Inc. **251 NLRB No. 139**
(barring off-duty Ees from plant premises, held interference, where off-duty Ees were seeking access to cafeteria, a non-working area, for purpose of soliciting for U, and had no intention of *wandering about the plant*, as E contended, and there was no rule limiting access to plant or rule which met standards defined in *Tri-County Medical Center, Inc.*, 222 NLRB 1089)

2847-8400 Requiring removal of union insignia

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons did not warrant setting aside of election, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E, and that they were free to wear buttons, and posted notice to that effect on bulletin board)

2847-9200 Requiring wearing of antiunion insignia

The Nestle Company **248 NLRB No. 106**
(invalid enforcement of rule prohibiting wearing of jewelry and nonuniform clothing with U insignia in E's production areas not objectionable where invalid enforcement equally affected both Us in initial and runoff elections)

2855 SURVEILLANCE OR IMPRESSION THEREOF

Maywood, Inc. **251 NLRB No. 139**
(supervisor's saying to in-plant committee member, *I hear you have been making house calls*, held interference, where supervisor testified that he had heard someone say the committee member was making house calls, and he wanted to know why; he knew committee member was active in U and he had idea that that was what house calls were about, but he *couldn't prove it*)

Woodland Molded Plastics Corp. **250 NLRB No. 020**
(setting aside of election warranted where E's treasurer observed for 10-15 minutes activities between U organizers and Ees taking place on public property; notwithstanding his initial presence was for lawful purpose of keeping U organizers off E's property in response to reports U organizers on company property)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E responded to inquiry about how E knew what was said at U meeting that E had people there who gave E information, thus giving impression of surveillance)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(E's statement that he had a list of yes votes and no votes created impression of surveillance and interfered with election)

2855-3300 Recruiting employees for surveillance

Maywood, Inc. **251 NLRB No. 139**
(E's soliciting Ee to observe and report to supervision U activities of other Ees held interference)

2862 VARIOUS ULP's DURING CRITICAL PERIOD

Eastern Maine Medical Center **253 NLRB No. 024**

(E's conduct held interference with decertification election where existence of unlawful broad no-solicitation rule at time of election and failure to bargain in good faith after filing of decertification ptn provide sufficient grounds for setting election aside; although withheld wage increase was found unlawful herein it did not constitute interference with election inasmuch as it was announced well before date decertification ptn was filed)

B. E. & K., Inc. **252 NLRB No. 036**

(supervisor's preelection statement to Ees that wearing of U stickers revealed belligerency, unlawful and interference, where supervisor had previously threatened Ees with discharge for distributing stickers)

McLane/Western, Inc. **251 NLRB No. 185**

(threats of plant closure and having to bargain from scratch and threat to punch Ee in nose for initiating U campaign)

Chester Valley, Inc. **251 NLRB No. 190**

(post-ptn conduct which constitutes ULPs is also conduct which invalidates subsequent election at least where change of 3 or 4 votes, as herein, would change election result and at least some of such conduct was known practically to all Ees; accordingly, ALJ did not consider which ULPs were fairly encompassed w/i objections)

Chester Valley, Inc. **251 NLRB No. 190**

(election set aside on basis of promises of benefits, various threats, offer of increased payments into Ee's profit-sharing plan, solicitation of grievances with implied promise to remedy them, and granting of wage increases)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**

(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

Conagra, Inc. **248 NLRB No. 085**

(election set aside in view of E's unlawful interrogation, threats, statements regarding futility of choosing U and that E would bargain from stratch and informing Ees that denial of wage increase was due to U campaign)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(setting aside of election warranted in view of unlawful discharges, refusal to pay strikers for accrued vacation, threats of reprisal and permanent replacement of ULP strikers)

Fluid Packaging Company, Inc. **247 NLRB No. 196**

Tartan Marine Company **247 NLRB No. 073**

(setting aside of election warranted and bargaining order issued in view of E's unlawful interrogation, threats, solicitation of Ees to withdraw U cards, encouraging Ees not to honor Bd subpoena, denial of wage increase and refusal to rehire U adherent)

Thermo King Corporation **247 NLRB No. 048**

(single violation resulting from threat of economic or other reprisals for voting for U held not to warrant inference that it affected election results, since it was too isolated in reference to total circumstances and to number of Ees involved and to vote count in election)

J. H. Block & Co., Inc. **247 NLRB No. 041**

(election set aside)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(E's truthful representation to Ee prior to election that E had acquired some machinery from defunct operations which had failed because of economic hardships that had befallen such enterprises due to excessive U bargaining demands held not unlawful threat to close plant and not interference)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(E's alleged statement to Ee prior to election that E would decline to enter into contract with U held not unlawful and not interference, where E had stated that, if U won, E would bargain with it because he was not opposed to unionization of plant, but he cautioned that he could not afford U's economic demands which would affect his corporate solvency)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**

(preelection promises to Ees of new pension plan and of possible pay raises effective after election, and extensive coercive interrogation of Ees concerning U activities)

Chef's Pantry, Inc. **247 NLRB No. 018**

(interference where E solicited grievances at periodic meetings with Ees; unilaterally instituted new educational benefits program; discriminatorily denied such benefits to leader of organizing campaign; revised long-standing policy prohibiting beards, and shortly before election permitted Ees to grow beards; and during week preceding election asked Ees if they had any complaints which E could remedy)

Union Carbide Corporation **JD-(SF)-13-80**

(solicitation of grievances, asking Ees to speak to coworkers negatively about U and threatening messed up benefits and insurance constituted interference)

2870 TOTALITY OF PRE-ELECTION CONDUCT

B. E. & K., Inc. **252 NLRB No. 036**

(objection to election averring that *By these and other acts* E interfered with Ees' statutory rights, sustained and election set aside, in view of E's acts of interrogation and threats, and discriminatory layoffs)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**

(where implied threats of plant closure communicated to significant number of Ees by senior company officials, psychological impact on all Ees is unlikely to dissipate and factors undermining first election would be present at future election; therefore bargaining order proper remedy)

2874 INTERFERENCE WITH ORDERLY ELECTION PROCESSES

Moody Nursing Home, Inc. **251 NLRB No. 022**

(E who conditioned Ee's right to vote upon first picking up paycheck committed objectionable conduct as this indicates to Ees that their franchise depends upon sufference of E rather than it being an absolute Sec. 7 right)

Contractors Redi-Mix, Inc. **250 NLRB No. 022**

(certification of election results rather than rerunning election, held warranted notwithstanding E's objection that election notice was not posted until the day before election; E contributed to the delay by failing to post the notice until 3 days after receiving it; Ees had opportunities prior to election to read the notice; parties independently apprised Ees of details of election arrangements; and all active Ees voted)

2878 FURNISHING OF LISTS OF EMPLOYEES NAMES AND ADDRESSES (EXCELSIOR LIST)

2878-1400 Adequacy of list furnished

2878-1450 Substantial compliance

St. Francis Hospital **249 NLRB No. 017**

(where excelsior list provided by E contained some incorrect and misleading information; such as, surnames and first and middle initials and E failed to inform R/O of corrected addresses, no violation as no evidence that E intended to willfully frustrate Bd processes; however, if facts revealed such willfulness violation could be found)

2878-1475 Adequacy of requirement not satisfied

Centre Engineering, Inc. **253 NLRB No. 028**

(list of Ees which was alphabatized by just names of Ees, w/i each letter of alphabet, and addresses did not include zip codes or departmental breakdown not adequate and warrants setting aside election)

2885 PRE-ELECTION PROPAGANDA

2885-0100 Generally

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **253 NLRB No. 029**

(case remanded to ALJ for purpose of conducting further hearing on issue of E's objection to election under *General Knit of California, Inc.*, 239 NLRB 619, where ALJ relied solely on formal papers submitted in R proceeding in analyzing E's objection and resolved the case entirely on application of standard set out in *Shopping Kart Food Market, Inc.*, and, on last day of hearing in the R proceeding, w/o knowledge of parties to the R proceeding, Bd, in *General Knit of California, Inc.*, overruled *Shopping Kart Food Market, Inc.*)

2885-2000 Employer statements

2885-2033 Kinds of statements

2885-2033-1700 Maintenance of existing level of benefits

Liberty Vinyl Corporation **JD-(SF)-268-80**
(pamphlet stating that present salaries, benefits and working conditions are up for grabs and subject to negotiations held not violative where labor relations consultant who distributed them made spoken remarks which dissipated misapprehension about status of existing benefits and wages if U got in)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2885-2033-3300 Declaration of union preference

N.L.R.B. v. San Antonio Portland Cement Company **611 F.2d 1148 (C.A. 5, 1980)**
(not just any advocacy of U by supervisor rises to level of supervisory pressure or coercion; mere statement of personal preference by supervisor is not coercive; no supervisory taint so long as nothing in words, deeds, or atmosphere of supervisor's request for authorization cards contain seeds of potential reprisal, punishment, or intimidation)

2885-2033-4100 Inevitability of loss or delay of pay raise

BRK Electronics (Electrical Workers, Local Union No. 461) **248 NLRB No. 169**
(E president's telling Ees, in response to Ee's question, that whether or not Ees received their pay raises prior to vacation would depend on outcome of upcoming election held interference, since comment carried message that pay raises would be affected by results of the upcoming election)

2885-2033-6700 Inevitability of loss of jobs

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(E's speech, 2 days before election, telling Ees that if they were not careful, *disaster could hit* and everything could be lost held interference, since reference shortly before election conveyed not too subtle message that vote for U would lead to strikes or plant closing and resulting loss of jobs; E thereby sought to take advantage of Ee concerns about job security and informed Ees that only way to protect their jobs was to vote against U)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(claim that E did not threaten Ees with job loss because it did not directly or explicitly attribute strikes, plant closing, or job loss to unionization, rejected; communications hovering on edge of permissible and impermissible are objectionable since person should be held accountable for use of double intendres at level of his audience rather than of sophisticated tribunals, Scholars, etc.; E's use of leaflet in form of obituary dealing with closing of nearby plant and reference to impending disasters are examples of brinkmanship which overstepped and tumbled over brink)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(Bd held that, in context of E's specific threats of plant closure, E's repeated statements in its speeches and campaign material constantly referring to U as being strike happy and associating U with strikes, plant closure, and loss of jobs constituted additional objectionable conduct which interfered with election)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(even if E did not engage in specific threats of plant closure, overall impact of E's campaign created coercive atmosphere sufficient to set aside election, where E constantly emphasized themes such as likelihood that strikes, plant closure, and loss of jobs would be direct result of unionization)

Louis Gallet, Inc. **247 NLRB No. 013**
(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

2885-2033-7500 Bargain from scratch

BRK Electronics (Electrical Workers, Local Union No. 461) **248 NLRB No. 169**
(E president's declaring to Ees that when U got in benefits contained in Ee manual would become *null and void* and that bargaining over those benefits would *start from scratch* warranted setting aside election, notwithstanding president's subsequent qualifying comments that everything would be negotiable; president's qualification of his *null and void* comment was insufficient to overcome the clear message that if Ees elected U, they would lose their existing benefits)

Liberty Vinyl Corporation **JD-(SF)-268-80**
(pamphlet distributed by labor consultant during U campaign stating that negotiations start from scratch held not violative, as it is truthful and unobjectionable for E to point out that contract negotiations involve tradeoffs and no benefits are exempt from bargaining process that E must engage in good faith)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2885-2033-8300 Inevitability of strikes and shutdown

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(although E's pamphlet did not directly attribute closing of nearby plant to unionization, distribution of pamphlet held interference, where it made graphic presentation of such plant closing in form of obituary notice which was clear attempt to communicate by form if not words clear message to Ees--unionization caused nearby plant to close and unionization would likewise cause E to close its plant)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(E's speech, 2 days before election, telling Ees that if they were not careful, *disaster could hit* and everything could be lost held interference, since reference shortly before election conveyed not too subtle message that vote for U would lead to strikes or plant closing and resulting loss of jobs; E thereby sought to take advantage of Ee concerns about job security and informed Ees that only way to protect their jobs was to vote against U)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(E's leaflet in form of obituary dealing with closing of nearby plant and E's preelection speeches held interference, where evidence did not support E's message that unionization caused closure of other area plants or that unionization would lead to strikes, plant closure, job loss, and other unidentified disasters, and E thereby failed to convey permissible noncoercive prediction that unionization might lead to economic dispute that could result in loss of jobs; Ees take hints of plant closing as coercive threats rather than honest forecasts)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(claim that E did not threaten Ees with job loss because it did not directly or explicitly attribute strikes, plant closing, or job loss to unionization, rejected; communications hovering on edge of permissible and impermissible are objectionable since person should be held accountable for use of double intendres at level of his audience rather than of sophisticated tribunals, Scholars, etc.; E's use of leaflet in form of obituary dealing with closing of nearby plant and reference to impending disasters are examples of brinkmanship which overstepped and tumbled over brink)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(Bd held that, in context of E's specific threats of plant closure, E's repeated statements in its speeches and campaign material constantly referring to U as being strike happy and associating U with strikes, plant closure, and loss of jobs constituted additional objectionable conduct which interfered with election)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(even if E did not engage in specific threats of plant closure, overall impact of E's campaign created coercive atmosphere sufficient to set aside election, where E constantly emphasized themes such as likelihood that strikes, plant closure, and loss of jobs would be direct result of unionization)

PPG Industries, Inc. Shelby Plant, Fiber Glass Division **247 NLRB NO. 114**
(speech permissible campaign propoganda, where E's remarks about strikes were in direct response to U's campaign position that E would not take a strike shutting down operations, and there was nothing in speech that would suggest that Ees would have to strike to secure gains, that strike was inevitable, that E rejected principles of collective bargaining, or that plant would be closed or jobs lost simply because U wor election)

Louis Gallet, Inc. **247 NLRB No. 013**
(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

2885-4000 Misrepresentation concerning material issue

2885-4042 Employees capable of evaluation

N.L.R.B. v. Sara Knoca, a sole proprietor d/b/a Clio Convalescent Center **633 F.2d 217(T) (C.A. 6, 1980)**

2885-4042—Cont.

(ct held claimed misrepresentation concerning arbitration provisions of preexisting agreement would not have affected result of election, especially in view of Ees' own knowledge of and experience with that agreement)

2885-4066 Misleading representation of the law

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(E's misstatement that Ees would be required to join U and pay dues if U won election held interference but not 8(a)(1) violation absent threat to Ee rights)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

LOF Glass, Inc. **249 NLRB No. 057**

(E's statement on two occasions shortly before election that individual right of Ees to handle grievances personally would be gone once U was voted in warranted setting aside election, since misrepresentation occurred when U did not have opportunity to make effective response and was serious enough to interfere with Ees' free choice; furthermore, Ees frequent use of E's *open door* policy made its reputed loss significant reason to reject U)

LOF Glass, Inc. **249 NLRB No. 057**

(E's statement intending to inform Ees that E's *open door* policy could no longer exist once U was voted in was serious misrepresentation of Ees' right under Sec. 9(a) to present their own grievances and have them adjusted w/o reference to any contractual procedures as long as substance of adjustment was not inconsistent with contract)

2885-4070 Union dues and fees

Moody Nursing Home, Inc. **251 NLRB No. 022**

(truthfull written propoganda concerning U dues distributed along with paychecks on election day not violative as only content of material is relevant to effect on election, not timing)

2885-4093 Board position or document

Lockwood, Kessler & Bartlett, Inc. A Subsidiary of Viatech, Inc. **251 NLRB No. 084**

(campaign leaflets reproducing fact portions of Bd decisions involving U in order to show conduct U had engaged in, not interference, where E did not state or imply that such practices were supported by Bd or mischaracterize Bd law or principles, E's comments regarding case facts were accurate, and other statements merely advised Ees that voting against U would prevent their being involved in similar situations; whether Bd found described conduct violative or not violative is immaterial to question of whether conduct occurred or whether Ees could avoid being subjected to it)

Lockwood, Kessler & Bartlett, Inc. A Subsidiary of Viatech, Inc. **251 NLRB No. 084**

(in case involving distribution of campaign leaflets containing fact portions of Bd decisions involving U, Bd held it is neither necessary nor appropriate to find that reproduction of incomplete Bd decisions obfuscates legal principles; to make such ruling would fashion a per se rule that any Bd document which is reproduced in part, for whatever reason and even if only reproduced portion is relevant, misuses Bd processes)

Pacific Motel Corp. d/b/a Best Western Motel (Hotel & Restaurant Employees, Local 162) **248 NLRB No. 179**

(E's distribution to Ees at meeting of sample ballot with writing *Vote No* on it and in large type statement *Your X in this square of the official ballot will mean that you do not want the union,* with an arrow pointing to the *No Box* of the ballot constituted interference)

2885-6000 **Comments and instructions concerning election**

2885-6025 Urging 'no' vote letters

Community Hospital, Inc. of East St. Louis **251 NLRB No. 149**

(E's letter on day of election urging *No* vote and stating failure to vote was automatic *yes* vote did not warrant setting aside election, notwithstanding elections determined by majority of Ees actually voting, since merely exhortation to vote absent evidence Ees refrained from voting as result of statement)

2885-6050 Posting or distribution of ballot marked 'no'

Pacific Motel Corp. d/b/a Best Western Motel (Hotel & Restaurant Employees, Local 162) **248 NLRB No. 179**

(E's distribution to Ees at meeting of sample ballot with writing *Vote No* on it and in large type statement *Your X in this square of the official ballot will mean that you do not want the union,* with an arrow pointing to the *No Box* of the ballot constituted interference)

2885-6062 Failure to post or delay in posting election notices

Earle Industries, Inc. **248 NLRB No. 011**

(E's failure to post election notice until 2 days prior to election found not violative where notice was posted beside time-clock which all Ees were required to use and 97 percent of Ees voted in election)

2889 PROUNION CONDUCT OF SUPERVISORS

Marconi, Inc., d/b/a El Caballo **251 NLRB No. 009**

(pre-election threat made by pro-U supervisor, objectionable, where supervisor still occupied his supervisory position and at time of election was in position to thrust his pro-U sympathies onto Ees and to implement his threat)

N.L.R.B. v. San Antonio Portland Cement Company **611 F.2d 1148 (C.A. 5, 1980)**

(not just any advocacy of U by supervisor rises to level of supervisory pressure or coercion; mere statement of personal preference by supervisor is not coercive; no supervisory taint so long as nothing in words, deeds, or atmosphere of supervisor's request for authorization cards contain seeds of potential reprisal, punishment, or intimidation)

N.L.R.B. v. San Antonio Portland Cement Company **611 F.2d 1148 (C.A. 5, 1980)**

(no supervisory coercion where one supervisor wore U button at U meeting on eve of election)

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**

(where 2 supervisors signed U authorization cards and voted, subject to challenge, in election, this is not sufficient misconduct to warrant setting aside election; their activity was minor and they did not threaten or coerce other Ees to vote for U)

2897 GIFTS AND OTHER INDUCEMENTS OF VALUE

Don Pizzolato, Inc. **249 NLRB No. 136**

(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

2897-9900 **Other**

B. E. & K., Inc. **252 NLRB No. 036**

(E's conduct in having Ees meet at polling area on plant premises, and assertedly making them wait before allowing them to vote, not interference, where E had Ees meet before polls opened)

Maywood, Inc. **251 NLRB No. 139**

(supervisor's telling Ee that she might be relieved of onerous assignment imposed on her if she revoked her signature on U authorization card and ceased associating with U advocates, held interference)

4200 CONDUCT OF LABOR ORGANIZATION

4201 GENERALLY

Connecticut Foundry Company **247 NLRB No. 145**

(fact that Ee serves as U observer at election or is prominant in organizing campaign does not make him U official and Bd is reluctent to set aside election due to conduct of such Ee)

4214 VERBAL PROMISES

N.L.R.B. v. Allen's I.G.A. Foodliner **633 F.2d 217(T) (C.A. 6, 1980)**

(U's promise to Ees of benefits they would receive if elected, not unlawful)

4228 VERBAL THREATS

United Broadcasting Company of New York, Inc. **248 NLRB No. 065**

(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner,* nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

Valley Rock Products, Inc. **JD-(SF)-285-79**

(U representative's unprovoked threats and assaults on E's president and vice-president in bar only six days before election warranted setting aside election where witnessed by some Ees and became widely known to other Ees thus creating climate of tension and coercion)

4235 VIOLENCE

Valley Rock Products, Inc. **JD-(SF)-285-79**

(U representative's unprovoked threats and assaults on E's president and vice-president in bar only six days before election warranted setting aside election where witnessed by some Ees and became widely known to other Ees thus creating climate of tension and coercion)

4242 ADDRESSING OR INTERVIEWING EMPLOYEES

4242-2500 Conversing with employees in immediate vicinity of polling area

The Nestle Company **248 NLRB No. 106**
(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

Midwest Stock Exchange, Inc.; et al. v. N.L.R B. **620 F.2d 629 (C.A. 7, 1980)**
(Bd finding of no interference in U observer's conversation with voters at polling place during election misapplied Bd's Milchem decision, since 5-minute conversation herein was considered by Bd sufficient under Milchem to void election, regardless of conversation's substance and effect; Bd predicated its decision upon context of observer's conversation and ignored last minute distraction of voters as well as *appearance of electioneering* that might result from prolonged conversation, and fact that, as in Milchem, conversation was not *one-to-one*)

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**
(U observer's statement *come on and vote, exercise your power* said to Ees in room adjacent to balloting area, not objectionable and not *electioneering*, since statement was not one that can be said to have inhibited Ees' free choice in selecting their representative)

4270 PRE-ELECTION PROPAGANDA

4270-0100 Generally

N.L.R.B. v. Calco-Imports-Exports, Inc. d/b/a Calco-Hawaiian Mfg. **621 F.2d 1029 (C.A. 9, 1980)**
(where U mailed Ees letter containing misstatements 8 days prior to election and clarified its misstatements in second letter Bd's finding of no violation upheld where E made no effort to clarify mistake supplied no evidence to show any Ee vote was affected and made no effort to ask for evidentiary hearing)

4270-3300 Marked ballots and election notices

Gleason Plant Security, Inc. **252 NLRB No. 125**
(U's reproduction and distribution to Ees of Bd's sample ballot and voting instructions with addition of words *Vote Yes Federation* and arrow pointing to *yes* box which had in it warranted setting aside election, since ballot was exact reproduction of Bd's sample ballot and gave no indication that U was responsible for alterations)

Armstrong Cork Company **150 NLRB No. 147**
(*altered sample ballot* distributed by E to Ees on day and evening before election, held objectionable, since E's use of *altered Bd ballot* created impression that Bd had allied itself with E's (anti-U) campaign)

4270-4000 Change in working conditions

N.L.R.B. v. Allen's I.G.A. Foodliner **633 F.2d 217(T) (C.A. 6, 1980)**
(U's promises to Ees of benefits they would receive if elected, not unlawful)

4270-5000 Appeals to racial and/or sexual prejudice

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(contention by E, in objecting to election, that U had created racially inflammatory atmosphere precluding fair election, rejected, where E failed to *supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election*)

4270-6700 Misrepresentation concerning material issue

4270-6701 Generally

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**
(election will be invalidated only if material fact has been misrepresented, opponent has no opportunity to reply and election process is impaired)

4270-6705 Union dues and initiation fees

N.L.R.B. v. Polyflex M Company **622 F.2d 128 (C.A. 5, 1980)**
(case remanded to Bd for evidentiary hearing where Ee affidavit raised substantial and material issue that would warrant setting aside election by presenting prima facie case that U representatives made statements which were subject to reasonable interpretation by Ees that they could avoid initiation fees by joining U prior to election)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(it is permissible for U to waive initiation fees for or to confer any other benefit upon those who join before representation election only if it does same for those who join after election)

4270-6706 Employees capable of evaluation

Aventura Country Club d/b/a Turnberry Isle Country Club **253 NLRB No. 051**
(U's campaign literature which contained information about benefits which would be extended to Ees' families in *future* did not warrant setting aside election where this statement amounted to no more than typical campaign promise, amenable to Ee evaluation and E response)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(*Monmouth Medical Center* distinguished in that U's impairment of Bd's neutrality was more substantial and pervasive than that caused by U leaflet in instant case where leaflet did not claim E had been judged of any violation, and overstatements amounted only to layman's rendition which was unlikely to substantially mislead voters as to status of Bd's action)

El Monte Tool and Die Casting, Inc. v. N.L.R.B. **633 F.2d 160 (C.A. 9, 1980)**
(statements concerning company's health plan and wage practices contained in pamphlets distributed 1 and 2 days prior to election which Ee affidavits stated were incorrect held *typical campaign propaganda* not materially affecting outcome of election; moreover, such topics are w/i Ee knowledge and capable of their independent evaluation)

4270-6715 De minimis effect; no real impact on election

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**

4270-6720 False wage data - employer's plant

El Monte Tool and Die Casting, Inc. v. N.L.R.B. **633 F.2d 160 (C.A. 9, 1980)**
(statements concerning company's health plan and wage practices contained in pamphlets distributed 1 and 2 days prior to election which Ee affidavits stated were incorrect held *typical campaign propaganda* not materially affecting outcome of election; moreover, such topics are w/i Ee knowledge and capable of their independent evaluation)

4270-6730 Hospitalization benefits

El Monte Tool and Die Casting, Inc. v. N.L.R.B. **633 F.2d 160 (C.A. 9, 1980)**
(statements concerning company's health plan and wage practices contained in pamphlets distributed 1 and 2 days prior to election which Ee affidavits stated were incorrect held *typical campaign propaganda* not materially affecting outcome of election; moreover, such topics are w/i Ee knowledge and capable of their independent evaluation)

4270-6740 False wage data - employer's other plants

N.L.R.B. v. Van Gorp Corporation **615 F.2d 759 (C.A. 8) (1980)**
(U official's informing unit Ees on night before election that U's contract with E's owner at another plant allowed twelve cents per quarter for cost of living adjustment (COLA) warranted setting aside election, since in fact the contract provided only twelve cents per year and COLA was important issue in the campaign, and U's last minute misrepresentation was accompanied by U supporters' threatening three Ees opposed to U and assaulting a fourth)

4270-6750 Timing, opportunity to rebut

Aventura Country Club d/b/a Turnberry Isle Country Club **253 NLRB No. 051**
(U's campaign literature which contained information about benefits which would be extended to Ees' families in *future* did not warrant setting aside election where this statement amounted to no more than typical campaign promise, amenable to Ee evaluation and E response)

N.L.R.B. v. Trans Continental Airlines, Inc. **614 F.2d 1116 (C.A. 6) (1980)**
(objection on grounds of alleged misrepresentation overruled where E held scheduled meeting with his Ees but failed to rebut U statements)

N.L.R.B. v. Van Gorp Corporation **615 F.2d 759 (C.A. 8) (1980)**
(U official's informing unit Ees on night before election that U's contract with E's owner at another plant allowed twelve cents per quarter for cost of living adjustment (COLA) warranted setting aside election, since in fact the contract provided only twelve cents per year and COLA was important issue in the campaign, and U's last minute misrepresentation was accompanied by U supporters' threatening three Ees opposed to U and assaulting a fourth)

4270-6760 False wage data - rival or other employers or other industries

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **251 NLRB No. 119**
(where U distributed pamphlets to E's Ees comparing their wage rates with those of Ees in county (public) hospitals and in private hospitals and misrepresented to Ees that U had negotiated both public and private hospitals' contracts, when in fact, had negotiated only private hospitals' contracts, Bd dismissed objection as private hospital pay rates were substantially higher than pay rates cited at public hospitals and, therefore, Ees would not have been induced to vote for U because of lower rates at public hospital)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(where E raised issue of conditions at another plant to counter U's arguments as to unionization benefits and stated that the other plant did not have contract with this U, this U's handbill stating that other plant and its U had agreed on contract providing for $9,000 insurance policy held not interference-since statement of future contract provisions did not constitute misrep-

4270-6760—Cont.

resentation; nor was statement of wages of assembler there interference notwithstanding incomparability of his required skills with those of assemblers at E's herein, since E did not use available information to counter U's agreement)

4270-6770 Statements concerning employer conduct

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. **599 F.2d 1057 (C.A. 9, 1979)**
(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

4270-6780 Benefits gained by union

Aventura Country Club d/b/a Turnberry Isle Country Club **253 NLRB No. 051**
(U's campaign literature which contained information about benefits which would be extended to Ees' families in *future* did not warrant setting aside election where this statement amounted to no more than typical campaign promise, amenable to Ee evaluation and E response)

4270-6785 NLRB rulings and decisions

Allis-Chalmers Corporation **252 NLRB No. 112**
(on ct remand, U's distribution of leaflet prior to election stating that Bd had recommended that Ee be put back to work with full back pay but that E is still fighting for their right to fire anyone whenever they want to, held not interference by U as E had sufficient time to make effective reply)

Kinney Shoe Corporation **251 NLRB No. 078**
(mischaracterization of Bd settlement agreement is serious misrepresentation which warrants setting aside election because Bd is unable to intervene during election campaign if its documents or processes have been misrepresented)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(*Monmouth Medical Center* distinguished in that U's impairment of Bd's neutrality was more substantial and pervasive than that caused by U leaflet in instant case where leaflet did not claim E had been judged of any violation, and overstatements amounted only to layman's rendition which was unlikely to substantially mislead voters as to status of Bd's action)

4270-6787 Misstatement of law

Connecticut Foundry Company **247 NLRB No. 145**
(newspaper article based on interview with U representative stating that Bd had dismissed all charges filed against U when in actuality parties had entered into settlement agreement was not sufficient misrepresentation to interfere with election, moreover E had 3 weeks in which it could have corrected impression given by article and it did nothing)

4270-6790 Circumstances of conduct or effect of election

N.L.R.B. v. Calco-Imports-Exports, Inc. d/b/a Calco-Hawaiian Mfg. **621 F.2d 1029 (C.A. 9, 1980)**
(where U mailed Ees letter containing misstatements 8 days prior to election and clarified its misstatements in second letter Bd's finding of no violation upheld where E made no effort to clarify mistake supplied no evidence to show any Ee vote was affected and made no effort to ask for evidentiary hearing)

4277 PAYMENT TO VOTERS ACTING AS ELECTION OBSERVERS

Easco Tools, Inc. (United Steelworkers of America, AFL--CIO--CLC) **248 NLRB No. 105**
(where U paid two Ees more than their regular pay for 8-hour workday for serving as election observers for U, regardless of whether they returned to work or took off from work after election, and Ees spent less than a total of two hours each in connection with their assignment as observers, Bd set aside the election since integrity of Bd election is better served by directing new election in the circumstances)

4284 GIFTS AND OTHER INDUCEMENTS OF VALUE

4284-5000 Initiation fees

Gulf Coast Automotive Warehouse Company, Inc. **248 NLRB No. 058**
(ALJ upon remand from Bd and ct found E failed to show that U engaged in pre-election misconduct involving **Savair** rule which would warrant setting aside results of election)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(it is permissible for U to waive initiation fees for or to confer any other benefit upon those who join before representation election only if it does same for those who join after election)

N.L.R.B. v. Mike Yurosek & Sons, Inc. **597 F.2d 661 (C.A. 9, 1979)**
(statement that any reduction in initiation fees would be available to all those signing authorization cards prior to execution of contract, lawful)

4284-8000 Waiver or reduction of union dues

Weyerhaeuser Company **247 NLRB No. 147**
(*Savair Manufacturing Co.* 414 U.S. 270 standard of conduct applies to pre and post petition conduct)

4284-9900 Other

Aventura Country Club d/b/a Turnberry Isle Country Club **253 NLRB No. 051**
(U's continuation of insurance coverage for U members, responsibility for which E had relinquished prior to election, not interference since recipients of insurance coverage were not receiving something new from U, but rather were being permitted to retain status quo; unlike cash gift or bribe, continuance of insurance coverage through U's payment of premiums had legitimate relationship to suitability of U -- from Ees' point of view -- as bargaining representative)

Aventura Country Club d/b/a Turnberry Isle Country Club **253 NLRB No. 051**
(statements made by U business agent that U would try to secure backpay for Ees did not justify setting aside election where this was kind of statement that party in representation election would make to voters to demonstrate potential support they could expect through its representation; it did not promise reward or condition a benefit on their vote, but simply set forth one area in which U would assist Ees)

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(payments to Ees for 1 to 3 hours spent after normal working day giving statements in aid of an investigation of ULP charges held not interference with election in view of purpose of payments, recipients' understanding thereof, and timing, some 4 weeks before election)

N.L.R.B. v. Gulf States Canners, Inc. **598 F.2d 896 (C.A. 5)**
(effect of U's gifts of gasoline to Ees on electorate, rather than intent of U, should be criteria in determining whether election should be set aside; all relevant facts should be considered including whether size of benefit conferred bore proper relationship to U's stated purpose in conferring it, number of Ees receiving benefit, views of Ees concerning purpose of gifts, and timing of gifts)

5600 EMPLOYEE CONDUCT

5625 RANK-AND-FILE UNIT EMPLOYEES

5625-0100 Generally

Six Flags Over Mid-America, Inc. **253 NLRB No. 013**
(less weight to be accorded to conduct of rank-and-file Ees than that of parties to election in considering election objections)

Six Flags Over Mid-America, Inc. **253 NLRB No. 013**
(Ees' discussion with other Ees of unaltered RD report and recommendations overruling some of U's objections and referring rest to hearing did not rise to level of objectionable conduct warranting setting aside of election; nothing was said or done that would arguably impair or call into question Bd's neutrality or constitute objectionable pre-election conduct)

5625-3300 Predictions and threats of physical violence

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(rumor that U adherent *brandished a gun at anti-U Ees after receiving an anti-union handbill* held false rumor of threat of violence, and even if Ees believed U adherent was pointing gun at them their subjective reactions were irrelevant to question of objectionable conduct)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(rank-and-file Ee's statement that female Ee had better go home and watch her kids held voicing of annoyance over female Ee's ceaseless palaver rather than threat of retaliatory action)

5625-6700 Statements not attributable to the parties

Six Flags Over Mid-America, Inc. **253 NLRB No. 013**
(conduct of rank-and-file unit Ees not objectionable pre-election conduct where not attributable to a party)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(*misrepresentations not attributable to either party require setting aside of election only when they create such an atmosphere of fear and violence that free and fair elections have been rendered impossible*)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(Ee actions and statements that are not attributable to U are generally entitled to less weight and cannot by themselves be used to set aside representation election)

N.L.R.B. v. Mike Yurosek & Sons, Inc. **597 F.2d 661 (C.A. 9, 1979)**

5625-6700—Cont.

(rumor of illegal aliens being reported to immigration authorities if U lost held not atributable to U and not interference with election as matter of law)

5625-6767 Having insubstantial impact

Maremont Corporation, World Parts Division **251 NLRB No. 110**
(statement by personnel office secretary that E would close or relocate plant if U won election, not interprence, where personnel secretary was nonunit Ee and her statement was not attributable to E nor was it of so serious nature that it could only have resulted in confusion and fear of repirsal which would have rendered impossible rational and uncoerced rational and uncoerced choice by Ees)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(Ee's statement that E intended to rehire unpopular supervisor after election did not warrant setting aside election where Ee did not claim outcome of election would influence E's decision on rehiring and absent evidence statement influenced Ees' votes)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(Ee's statement that E intended to rehire unpopular supervisor after election did not warrant setting aside election where Ee did not claim outcome of election would influence E's decision on rehiring and absent evidence statement influenced Ees' votes)

5625-8300 Threats to other employees

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(threat of one member of in-plant organizing committee to take another member to ct because he quit going to U meetings, not unlawful, since threat was of peaceful action from U, not individual)

5650 EMPLOYEES OUTSIDE BARGAINING UNIT

5650-2500 Supervisors

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(if E knows that its supervisory personnel are advocating U and takes no action to dissipate effect, such advocacy cannot be used as basis for setting aside election)

7000 CONDUCT OF NON-PARTICIPANTS IN ELECTION

7075 LOCAL NEWSPAPER, RADIO OR TV STATION

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(editorial printed in local newspaper on day of election which predicted plant would close if U won election found to reinforce E's prior threats of plant closings and warrants issuance of bargaining order)

8400 ELECTIONEERING AT OR NEAR POLLS WHILE OPEN

8401 GENERALLY

Northern Telecom, Inc. **250 NLRB No. 085**
(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

Cumberland Nursing & Convalescent Center (Retail Store Employees Union, Local 692) **248 NLRB No. 063**
(objection by E to consent election, overruled and did not warrant hearing where E failed to present *prima facie* case in support of his objections which alleged, *inter alia*, objectionable electioneering; proffered evidence failed to disclose unequivocally that polls were in part open at time electioneering took place; it was not certain where Ees were at time alleged prohibited conduct was supposed to have occurred)

8420 ORAL COMMUNICATION TO VOTERS

8420-3300 Location of communication

8420-3325 Conversation within voting area

8420-3325-5000 By union (representative, observer, or agent)

The Nestle Company **248 NLRB No. 106**
(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

8420-3350 Conversation just outside voting area or within designated 'no electioneering' area

8420-3350-5000 By union (representative or agent)

Midwest Stock Exchange, Inc.; et al. v. N.L.R.B. **620 F.2d 629 (C.A. 7, 1980)**
(Bd finding of no interference in U observer's conversation with voters at polling place during election misapplied Bd's Milchem decision, since 5-minute conversation herein was considered by Bd sufficient under Milchem to void election, regardless of conversation's substance and effect; Bd predicated its decision upon context of observer's conversation and ignored last minute distraction of voters as well as *appearance of electioneering* that might result from prolonged conversation, and fact that, as in Milchem, conversation was not *one-to-one*)

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**
(U observers's statement *come on and vote, exercise your powers* said to Ees in room adjacent to bolloting area, not objectionable and not *electioneering*, since statement was not one that can be said to have inhibited Ees' free choice in selecting their representative)

8420-3350-7500 Others

N.L.R.B. v. Campbell Products Department, Harry T. Campbell Sons Company, Division of Flintkote Company **623 F.2d 876 (C.A. 3, 1980)**
(where rank-and-file Ee, active U adherent, engaged other Ees in conversation in vicinity of polling place while on their way to vote, this electioneering not considered conduct which would interfere with election choice although, if agent or representative of party to election had engaged in such conduct, Bd would have been justified in taking stricter view)

8430 MERE PHYSICAL PRESENCE

8430-2500 Within voting area

8430-2575 Others

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(objection that U supporters were permitted to stay in polling area after casting their ballots, overruled; at most some Ees waiting in line said vote yes and others vote no, which did not constitute coercive and disruptive conduct)

8430-5000 Just outside voting area or within designated 'no electioneering' area

B. E. & K., Inc. **252 NLRB No. 036**
(observed presence of E agents in hallway outside conference room in which voting was taking place, held not interference, since U's understanding that hallway constituted immediate area of voting was its interpretation of what constituted such area, but facts of case did not support such interpretation)

8430-5050 By union official or representative

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. **599 F.2d 1057 (C.A. 9, 1979)**
(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

8430-7500 Away from immediate vicinity or outside designated 'no electioneering' area

Northern Telecom, Inc. **250 NLRB No. 085**
(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(objection that U supporters were permitted to stay in polling area after casting their ballots, overruled; at most some Ees waiting in line said vote yes and others vote no, which did not constitute coercive and disruptive conduct)

8440 WEARING OF INSIGNIAS

8440-3300 Within voting area

8440-3350 By observer

The Nestle Company **248 NLRB No. 106**
(objection overruled where observer for 1 U wore bumper sticker of his U on his shirt and observer for other U wore smaller U button on his shirt)

8450 USE OF PLACARDS

8450-6700 Outside voting area

Northern Telecom, Inc. **250 NLRB No. 085**
(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

8460 DISTRIBUTION OF CAMPAIGN LITERATURE

8460-2500 Time of distribution

Moody Nursing Home, Inc. **251 NLRB No. 022**
(E who conditioned Ee's right to vote upon first picking up paycheck committed objectionable conduct as this indicates to Ees that their franchise depends upon sufference of E rather than it being an absolute Sec. 7 right)

8470 PHYSICAL COERCION OR THREATS THEREOF AND OTHER TYPES OF RESTRAINT

B. E. & K., Inc. **252 NLRB No. 036**
(E's attorney who told laid off Ees, who appeared at polling place on E's premises for purpose of voting in election, that they were trespassing on private property and were liable to arrest held interference, since attorney's conduct was tantamount to assertion of control of election by party and interfered with Ees' right to vote by injecting possibility of arrest for exercising such protected right)

9000 ACTIONS OF BOARD OR BOARD AGENT

9067 ACTION OF BD AGENT

Jobbers Meat Packing Co. Inc. **252 NLRB No. 008**
(notwithstanding that one eligible voter was disenfranchised as result of Bd agent's unavoidably opening polls two hours later than scheduled, U was certified and election results not set aside after tally of ballots showed 11 for and seven against U with one challenged ballot, since votes of challenged ballot and excluded voter would not have been determinative of election even if both had voted against U)

N.L.R.B. v. Allen's I.G.A. Foodliner **633 F.2d 217(T) (C.A. 6, 1980)**
(Bd agent's comment to E observer that *if Ees had been treated right she would not be there holding election* was improper but not prejudicial where no voters were present in polling place at time remark was made, most voters had cast their ballots, and there was no evidence in the record that agent's remark was relayed to any voter who had not yet cast his/her ballot)

385 POST-CERTIFICATION AND UNIT CLARIFICATION ISSUES

0100 GENERALLY

1200 VALIDITY OF CERTIFICATION

2500 AMENDMENT OF CERTIFICATION

2525 CHANGE IN REPRESENTATIVE

2525-1700 Substitution of local for certified international

Duquesne Light Company and Its Wholly Owned Subsidiary, Allegheny County Steam Heating Company (System Council U--10, Electrical Workers) **248 NLRB No. 168**
(ptn to amend certification to substitute local Us for international U as certified bargaining representative granted, since amendment's effect would be no more than recognizing local Us de facto status as exclusive bargaining representative and unit Ees had also sanctioned status of local Us as their bargaining representative not only by acquiescing in local Us' principal role in negotiations and administration of agreements, but also by ratifying contracts recognizing local Us as their bargaining representative)

2525-8400 Employee approval of substitution of representative

2525-8450 Approval by vote on issue

2525-8450-4000 Eligibility to vote

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**
(selection of delegates to state annual convention from volunteers by division president at meeting where membership had opportunity to appear and express their desires not violative of by-laws or denial of due process)

2525-8450-4033 Unit members

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**

2525-8450-6000 Regularity of voting procedures

Duquesne Light Company and Its Wholly Owned Subsidiary, Allegheny County Steam Heating Company (System Council U--10, Electrical Workers) **248 NLRB No. 168**
(Bd more lenient towards voting procedures used by locals to obtain unit Ees' approval for AC where vote is on substitution of locals for International with which they are affiliated, rather than merger or affiliation)

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**
(absence of secret ballot on affiliation not violation of by-laws or denial of due process where membership w/o opposition instructed delegate to vote for permanent affiliation, and no one requested or moved for secret ballot; as to absence of quorum, division had modified (de facto) the quorum provision to comport with average attendance)

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**
(when collective bargaining representative affiliated with International U and E refused to bargain with U after this point, E violated Act where successor U is same bargaining entity as predecessor U, and since it had right to make its own policy determinations, negotiate contracts, call strikes, and retained right to establish and keep its own dues, local U is autonomous from International; vote in favor of affiliation was unanimous, conformed to U constitution; moreover, fact that vote was not secret or separate vote by unit Ees not held does not negate validity as Us are not held to Bd's own election standards)

2525-8450-8000 Approval by majority of those voting

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**

5000 SUSPENSION OR REVOCATION OF CERTIFICATION

5050 GROUNDS FOR SUSPENSION OR REVOCATION

5050-7500 Failure to represent employees

5050-7533 Conflict of interest

Sierra Vista Hospital, Inc. **249 NLRB No. 066**
(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflict of interest under *Sierra Vista*, 241 NLRB No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

7500 UNIT CLARIFICATION

7501 GENERALLY

7501-2500 Board authority

7501-2501 Generally

Shop Rite Foods, Inc. **247 NLRB No. 143**
(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israil Medical Center, 231 NLRB 295 (1977);* ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarify unit established by agreement of parties)

7501-2512 No clarification where question of representation exists

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**
(determination of whether position of secretary to administrator of nursing service, which predated current collective-bargaining agreement, should be included in unit raises qcr and is not considered in unit clarification proceeding)

James A. McBrady, Inc. and Maine Erection, Inc. **247 NLRB No. 017**
(Bd refused to clarify unit when job classification was in existence at time previous collective bargaining agreement entered into and this agreement makes no specific reference to job classification; further, Ees in this job classification perform function separate and apart from other Ees; thus, ptn raises QCR which precludes Bd from changing previously established bargaining unit w/o first holding election)

7501-2537 Clarification of uncertified unit permitted under section 9(b)

Stafford-Lowdon Company, An American-Standard Company **253 NLRB No. 031**
(where E informed U during negotiations that it had filed U C ptn but would sign new contract subject to outcome of proceeding and U agreed, subsequent execution of 1-year collective bargaining agreement does not render U C ptn moot or unnecessary)

7501-2593 Availability of clarification for modification of unit description

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(during mid-term contract negotiations Bd would refuse to entertain midterm U C ptn to exclude alleged supervisors where parties were aware of unit placement problems when contract executed; to do so would be disruptive of established bargaining relationships)

7533 ISSUES RESOLVABLE BY CLARIFICATION PROCEEDING

7533-2000 Job classification coverage

7533-2001 Generally

7533-2001-5000 Intention of parties to include or exclude classification

Shop Rite Foods, Inc. **247 NLRB No. 143**

7533-2020 Classifications existing at time of certification or recognotion

7533-2020-3300 Employees sought excluded from prior representation

James A. McBrady, Inc. and Maine Erection, Inc. **247 NLRB No. 017**

7533-2020-3300—Cont.

(Bd refused to clarify unit when job classification was in existence at time previous collective bargaining agreement entered into and this agreement makes no specific reference to job classification; further, Ees in this job classification perform function separate and apart from other Ees; thus, ptn raises QCR which precludes Bd from changing previously established bargaining unit w/o first holding election)

7533-2040 Classification functionally related

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(secretary to president of E who is not involved with formulation of labor relations policies included in unit where her duties are similar to those performed by represented clerks and record not clear that position existed prior to bargaining agreement)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(financial administrator of E included in unit where newly created position and she performs duties not unlike those clerks already represented by U)

7533-2060 Classification established subsequent to certification or recognition

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(position of medical laboratory technologist falls w/i definition of *professional* Ee as they have completed college *degree* program and are registered with professional association and use independent judgment and discretion in performance of their duties when analyzing and interpreting medical tests and, therefore, are excluded from technical unit w/o separate election)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(position of ward manager included in unit because of Ee's contact with other Ees represented by U, creation of position post-dated bargaining agreement, and there is no other unit in which Ee could be included)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(secretary to president of E who is not involved with formulation of labor relations policies included in unit where her duties are similar to those performed by represented clerks and record not clear that position existed prior to bargaining agreement)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(financial administrator of E included in unit where newly created position and she performs duties not unlike those clerks already represented by U)

Metromedia, Inc.---KMBC--TV **247 NLRB No. 057**

(Bd clarified certified unit of cameramen to also include cameramen using newly introduced minicams where supervision same for minicam cameramen as for film cameramen, operation of both types of cameras and mechanical skills involved are same, and most important, job functions - video gathering of news - are essentially identical)

7533-4000 Expanded or changed operations following certification or voluntary recognition

7533-4040 New locations

Westwood Import Company, Inc. **251 NLRB No. 162**

(an accretion is by definition merely an addition of new Ees plus an already group of Ees so added to existing bargaining unit are regarded as part of that unit; in deciding whether new group of Ees is accretion to existing unit, Bd not only considers such factors as functional integration level of management control, similarity of working conditions, organizing history of Ee interchange, job skills, and physical separateness, but also gives special consideration to interests of unrepresented Ee in exercising their own right to self organization)

7533-4060 New operations

Westwood Import Company, Inc. **251 NLRB No. 162**

(an accretion is by definition merely an addition of new Ees plus an already group of Ees so added to existing bargaining unit are regarded as part of that unit; in deciding whether new group of Ees is accretion to existing unit, Bd not only considers such factors as functional integration level of management control, similarity of working conditions, organizing history of Ee interchange, job skills, and physical separateness, but also gives special consideration to interests of unrepresented Ee in exercising their own right to self organization)

Local 282, Teamsters (Mid-County Transit Mix, Inc.) **250 NLRB No. 076**

(when 2 affiliated companies merged into 3rd company (successor) and remaining Ee of one affiliated company transferred to unit of successor, Bd held Ee accretion to successor's bargaining unit notwithstanding member of different U)

7533-4080 Reorganization of operations

United Hospitals, Incorporated and The Children's Hospital, Inc. **249 NLRB No. 063**

(where 3 E members of 21 E multi-E association planned merger and admitting clerks of 2 of these 3 E's were unrepresented by U, U's request that unrepresented Ees be treated as accretion to unit denied because out of 21 Ee groups only 2 were represented by U and Bd will not add unrepresented Ees to multi-E unit on piece meal basis, notwithstanding all admitting clerks would be on 1 payroll, work in single admitting department, perform similar job functions under common supervision)

7533-8000 Consolidation of existing units represented by same petitioner

7533-8034 Employerwide unit presumptively appropriate

7533-8034-5000 Existing units related by bargaining history

Stafford-Lowdon Company, An American-Standard Company **253 NLRB No. 031**

(two-plant bargaining unit found appropriate and U C ptn dismissed where although differces in Ee skills, terms and conditions of employment, operations in two plants exist, these differences prevailed for past 21 years and only new difference since new ownership in last year is assignment of separate manager for both; this change not substantial enough to negate long bargaining history)

7533-8050 Rejection of clarification would leave parties no early course of relief

Shop Rite Foods, Inc. **247 NLRB No. 143**

(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israel Medical Center, 231 NLRB 295 (1977)*; ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarify unit established by agreement of parties)

7533-9000 Division of single unit into multi units

Stafford-Lowdon Company, An American-Standard Company **253 NLRB No. 031**

(two-plant bargaining unit found appropriate and U C ptn dismissed where although differces in Ee skills, terms and conditions of employment, operations in two plants exist, these differences prevailed for past 21 years and only new difference since new ownership in last year is assignment of separate manager for both; this change not substantial enough to negate long bargaining history)

393 PROCEDURE IN REPRESENTATION PROCEEDINGS

0100 GENERALLY

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

1000 PARTIES

2000 INTERVENTION

2050 INTERVENTION BEFORE HEARING

Union College **247 NLRB No. 069**
(motion by Ees' Association to intervene in instant case denied and cross ptn by Ees' association for election in another case dismissed, since association had not submitted timely showing of interest that predated election hearing)

3000 SERVICE OF DOCUMENTS

4000 SUBPOENAS

4001 GENERALLY

4001-5000 Nature and scope

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(E's subpena for production from Nurses' Association, on statewide or regional basis, of documents concerning its employment-related assistance to supervisors who are members of Association held not improperly limited by RD in its geographical scope to Es w/i county; in view of Bd's finding that E's conflict-of-interest theory concerning Association's assistance to supervisors was w/o merit, additional evidence obtained under subpena would not be relevant)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**
(RD's denial of E's interim appeals from rulings of hearing officer sustained, where E's subpena sought complete minutes of Nurses' Association's board of directors and those of its region, hearing officer ruled that he would conduct in camera inspection of portions of minutes not voluntarily produced by Association, and further granted Association's mtn to quash E's subpena for minutes of Association's administration commission; evidence sought is not relevant in view of Bd's ruling that E's conflict-of-interest theory concerning whether Association is qualified to represent Ees was w/o merit)

5000 EXPEDITED ELECTION PROCEDURE

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD **632 F.2d 30 (C.A. 7, 1980)**
(district ct had no jurisdiction to review Bd decision denying certification to expedited election conducted pursuant to 8(b)(7)(C) during period in which challenges to validity of election were being resolved; ct rejected contention that Bd's rule that election becomes valid under 8(b)(7)(B) when all challenges and objections to it have been resolved is contrary to Act when applied to expedited election conducted under 8(b)(7)(C))

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD **632 F.2d 30 (C.A. 7, 1980)**
(contention that GC violated Act when he failed to issue ULP complaint against U that picketed for recognition after date of expedited election under 8(b)(7)(C) during period in which challenges to validity of election were being resolved, rejected; assuming limited review may be available under Freedom v. Kyne, ct held there is no specific and unambiguous provision of Act requiring action in conformity with E's immediate certification theory, and jurisdiction is, accordingly not present to consider GC's failure to treat as valid an election that had not yet been determined to be valid)

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD **632 F.2d 30 (C.A. 7, 1980)**
(ct declined to rule on issue as to validity of Bd's R/R and procedures set forth in GC's case handling manual which provide for holding hearings prior to conducting expedited elections in certain extraordinary cases, and which E claimed were in conflict with clear command of 8(b)(7)(C); controversy as to Bd and GC is hypothetical, abstract, and not ripe for review, and E lacks standing to contest their validity)

6000 PRE-ELECTION PROCEDURE

6007 FILING OF PETITION

6007-1700 Timeliness

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**
(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

6007-3300 Adequacy

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**
(U's contention that deauthorization ptn should be dismissed since appropriate unit should include both office Ees and installers and technicians rather than only office Ees as pattern of bargaining has been to include separately certified units under one contract rejected, where no intent to merge two units into single unit as evidenced by reference in supplemental agreement to 2 units)

6014 PRELIMINARY INVESTIGATION

Chester Valley, Inc. **251 NLRB No. 190**
(election can be set aside on basis of conduct discovered during investigation even though particular conduct was not object of specific objection)

6027 WITHDRAWAL OF PETITION

6027-2500 Basis of withdrawal

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

6034 DISMISSAL OF PETITION

6034-1400 Authority of Regional Director

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(decisions of RD, if not set aside by Bd,are entitled to same weight as determinations by Bd; RD's opinion *final* determination binding parties where party with prerogative to appeal to Bd did not do so)

6034-2800 Basis for dismissal

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**
(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

Union College **247 NLRB No. 069**
(motion by Ees' Association to intervene in instant case denied and cross ptn by Ees' association for election in another case dismissed, since association had not submitted timely showing of interest that predated election hearing)

William Moses, Estate of Bella Moses **247 NLRB No. 20**
(ptn dismissed since no qcr existed where intervening incumbent U's disclaimer of interest in representing petitioned-for unit of Ees was untimely and ineffective attempt to withdraw from multi-E bargaining)

6034-4200 Effect of

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(decisions of RD, if not set aside by Bd,are entitled to same weight as determinations by Bd; RD's opinion *final* determination binding parties where party with prerogative to appeal to Bd did not do so)

6034-7000 Appeal to Board

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(decisions of RD, if not set aside by Bd,are entitled to same weight as determinations by Bd; RD's opinion *final* determination binding parties where party with prerogative to appeal to Bd did not do so)

6054 CONSENT ELECTION AGREEMENTS

6054-0100 Generally

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where consent election agreements have been approved and elections held, Bd will look to circumstances to ascertain parties' intent or agreement and

6054-0100—Cont.

then if issue is still in doubt declare the agreement defective and the election a nullity)

6054-6700 Agreements for determination of post election issues by Board

6054-6750 Stipulation of unit

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**

(where parties incorporated Norris-Thermador lists by reference into consent election agreements rather than describing the units, Bd found that they had consented to requirement that decertification elections be held in previously recognized units, and that units described in the ptns conformed to existing contractual units with minor variances)

6061 BLOCKING CHARGE POLICY

6061-3300 Pending charge of ULP affecting unit employees

Gould, Inc. v. Robert S. Fuchs, et al. **486 F.Supp. 164 (D Ct. CT, 1980)**

(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

6061-3359 Deferral of decertification proceeding required in face of refusal to bargain charge

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**

(decertification ptn wrongfully dismissed where ptn for election covering single plant purchased by new E and existing certification covered E-wide unit was filed one week prior to E receiving notice that ULP charges had been filed against it, although U had filed charges five days earlier)

6061-3362 Dismissal of petition

Carol Estes and 166 Other Warehouse Facility Employees v. N.L.R.B. **No. 78-4068 (D Ct. KS, Jan. 5, 1979 (unreported))**

(application of *blocking charge rule* to decertification ptn during pendency of ULP charges filed by U and Cs issued on behalf of Bd concerning charges, held appropriate, since it was reasonable to assume RD, at time of dismissal of ptn, had some idea whether U's charges were substantial and whether representation election could fairly be held)

6068 HEARING

6068-0100 Generally

The Altoona Hospital **253 NLRB No. 107**

(parties do not have absolute right to hearing on objections to election; it is only when moving party presents *prima facie* showing of substantial and material issues which would warrant setting aside election that it is entitled to evidentiary hearing)

The North American Soccer League, etc., et al. v. N.L.R.B. **613 F.2d 1379 (C.A. 5) (1980)**

(soccer league not denied due process by Bd's refusal to conduct representation hearing in any city other than a named city, where there was presence of league offices and records in the named city and there was testimony at hearings by representatives of some of the clubs)

6068-6000 Hearing Officer

6068-6067 Authority of

6068-6067-6700 Obligation to develop complete record

Crown Coach Corporation v. N.L.R.B. **626 F.2d 865(T) (C.A. 9, 1980)**

(enforcement denied and case remanded for further hearing where ct found prejudicial error in denial of E during hearing on objections to election to question Ee witness on issue of U agency in regard to Ee misconduct)

6081 DECISION ON PETITION

6081-2000 Decision by Regional Director

6081-2001 Generally

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**

(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final*, must be applied *prospectively* only)

6081-4000 Review of Regional Director's decision

6081-4050 Review limited to record

Bon Secours Hospital, Inc. **248 NLRB No. 019**

(where E's brief to Bd contains factual statements not in record of hearing Bd will accept brief but will not rely on facts not established in record)

6081-8000 Reconsideration of decision

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**

(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final*, must be applied *prospectively* only)

6088 RECORD

6088-3300 R&R 102.68

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. **622 F.2d 1195 (C.A. 4, 1980)**

(where RD determines that objections to election do not require hearing, RD, and not objecting party, is responsible for transmitting *whole* record (all evidence considered in reaching decision) to Bd for its review on appeal, notwithstanding R/R 102.69(g) places responsibility for submission of documents on objecting party)

6096 REOPENING RECORD AND REMAND

N.L.R.B. v. Tio Pepe, Inc. **629 F.2d 964 (C.A. 4, 1980)**

(ct denied enforcement of bargaining order and remanded case to Bd for evidentiary hearing on two issues advanced in E's mtn to reopen record since E made sufficient *prima facie* factual showing of after-discovered evidence that *captains* had promised other dining room Ees that, if U won, captain's distribution of pooled tips would be adjusted in their favor, which, if sustained later at full hearing, would undermine Bd's reasons for its denial of supervisory status for *captains* in unit of dining room Ees and further significantly affect election by way of monetary inducement for U support)

7000 POST-ELECTION PROCEDURE

7011 FILING OF CHALLENGES AND OBJECTIONS TO ELECTION

7011-2000 Time for filing

Monier Roof Tiles **249 NLRB No. 092**

(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

7011-2050 Within 5 days of furnishing of tally of ballots

N.L.R.B. v. Campbell Products Department, Harry T. Campbell Sons Company, Division of Flintkote Company **623 F.2d 876 (C.A. 3, 1980)**

(where E filed timely objection and subsequently filed another objection after 5 day period, Bd erred in not considering merits of latter objection holding it was untimely filed, since established Bd policy is that once timely objection filed RDs are *required* to consider *all* evidence, of improper conduct brought to their attention or that they discover themselves during their investigation)

7011-2075 Within 3 days of furnishing revised tally of ballots

Staco, Inc. **248 NLRB No. 171**

(where E was not present at opening of certain E's ballot, Bd rejected E's contentions that it was denied due process and that Ee's ballot should be declared void, notwithstanding E's assertion that its counsel did not receive RD's letter advising parties of date and time when Ee's ballot would be opened until 3 days after date scheduled for opening, one day after E had been furnished revised tally; E failed to either file objection to revised tally, or request for extention of time in which to do so)

7011-4000 Statement of reasons for objections

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**

(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

7011-5000 Obligation to furnish evidence in support of objections

7011-5000 Obligation to furnish evidence in support of objections

Monier Roof Tiles **249 NLRB No. 092**
(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

7011-8000 Service on other parties

St. Johns Smithtown Episcopal Hospital **250 NLRB No. 077**
(petitioner's mtn to dismiss intervenor's objections to election, granted, where intervenor did not comply with Bd's R/R Sec. 102.69(a) by serving its objections on petitioner 2 months after election, and illness of intervenor's counsel at time objections were filed was not *valid and compelling reason why compliance is not possible*; nor was there *an honest attempt to substantially comply* with Bd's R/R on service of objections in intervenor's belated service on petitioner after being informed that it had failed to conform to R/R)

Platt Brothers **250 NLRB No. 049**
(E's mtn to dismiss petitioner's objections for lack of timely service of copy of objections on opposing party granted where E did not receive copy until 2 weeks after filing date; absence or prejudice to party by lack of timely service irrelevant; also fact that Bd agent read objections verbatim to E 4 days after objections filed or petitioner forwarding objections to E immediately upon being served with E's mtn to reject objections constitutes compliance with Sec. 102.69(a))

Auto Chevrolet, Inc. **249 NLRB No. 070**
(E's mtn to dismiss objections, granted, where U established neither *an honest attempt to substantially comply* with service requirement under Bd's R/R Sec. 102.69(a) nor *a valid and compelling reason why compliance was not possible*, since U did not justify its failure to comply by claiming that Regional Office advised E via telegram that U was filing objections and, thus, E could have called U if it had not received copy, and by claiming that U representative made personal service of copy to E's secretary)

Auto Chevrolet, Inc. **249 NLRB No. 070**
(in finding U failed to show honest attempt to substantially comply with service of objections on E under Bd's R/R Sec. 102.69(a), Bd noted that it was not signalling return to inflexible definition of *immediately* and it was not suggesting that, in all circumstances,, it would consider a few days' delay as barring objecting party from establishing substantial compliance; however, U's service on E 7 working days (11 calendar days) late, in conjunction with U's misreading of R/R, did not constitute substantial compliance)

Auto Chevrolet, Inc. **249 NLRB No. 070**
(U's misreading of Bd's R/R Sec. 102.69(a) as allowing 5-day period for service of objections on E upon filing of timely objections did not justify its failure to *immediately* make such service as required by R/R)

Auto Chevrolet, Inc. **249 NLRB No. 070**
(contention that Bd's R/R should be changed so as to provide that RDs will serve copies of objections to election on opposing party in procedure similar to RD's service of ULP charges on charged party, rejected, since such service is a courtesy only and RDs do not have responsibility for serving other parties' documents in any Bd proceeding, nor is there any compelling reason to make exception to Bd's general practice by imposing on RDs obligation to serve copies of objections)

Auto Chevrolet, Inc. **249 NLRB No. 070**
(in order to maintain orderly processing of R cases, there must be adherence to Bd's R/R, and time requirements in R/R will not be ignored on singular ground that party has not produced any evidence that it was prejudiced by another party's failure to comply with service requirements)

Union Carbide Corporation **JD-(SF)-13-80**
(belated receipt of objections by E held not to nullify them where U made honest attempt to comply with rules and no prejudice due to delayed receipt was shown)

7022 INVESTIGATION OF CHALLENGES AND OBJECTIONS

7022-0100 Generally

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(objecting party must present specific evidence to RD in order for him to determine if investigation is required)

7022-1700 Regional Director's authority to resolve issues on basis of investigation

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(RD not required to interview Ees named in C where objecting party failed to allege any specific events concerning specific people with respect to alleged U threats)

7022-3300 Obligation of protesting party to furnish supporting evidence

Cumberland Nursing & Convalescent Center (Retail Store Employees Union, Local 692) **248 NLRB No. 063**
(objection by E to consent election, overruled and did not warrant hearing where E failed to present *prima facie* case in support of his objections which alleged, *inter alia*, objectionable electioneering; proffered evidence failed to disclose unequivocally that polls were in part open at time electioneering took place; it was not certain where Ees were at time alleged prohibited conduct was supposed to have occurred)

Judd Valve Co., Inc. **248 NLRB No. 018**
(in R case involving challenged ballot, Bd did not consider statement by U in its exceptions to RD's failure to contact Ee who was willing to give a sworn affidavit where U attached to its exceptions a signed statement prepared by Ee but failed to state when Ee's name was given to RD, and why signed statement was not submitted to RD; see R/R Sec. 102.69(g))

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(conclusory allegations are not sufficient to obtain hearing in representation case; losing party bears heavy burden)

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(burden is on objecting party to present specific evidence to warrant setting aside election, not Bd staff)

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(RD not required to interview Ees named in C where objecting party failed to allege any specific events concerning specific people with respect to alleged U threats)

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**
(party challenging election has heavy burden to show coercion took place and is not entitled to evidentiary hearing unless it supplies prima facie evidence presenting substantial and material factual issues which would warrant setting aside election)

7022-5000 Consideration of conduct not included in objections by parties

Moody Nursing Home, Inc. **251 NLRB No. 022**
(RD may set aside election based on conduct discovered during investigation, notwithstanding that conduct was not subject of specific objection)

Airlines Parking, Inc. **250 NLRB No. 081**

Chef's Pantry, Inc. **247 NLRB No. 018**
(although RD, in setting objection to election for hearing, did not specifically mention incident giving rise to E's objection to receipt of evidence relating thereto, RD's order directing hearing did not purport to forbid hearing of any evidence fairly encompassed by objection in question)

N.L.R.B. v. Campbell Products Department, Harry T. Campbell Sons Company, Division of Flintkote Company **623 F.2d 876 (C.A. 3, 1980)**
(where E filed timely objection and subsequently filed another objection after 5 day period, Bd erred in not considering merits of latter objection holding it was untimely filed, since established Bd policy is that once timely objection filed RDs are *required* to consider *all* evidence of improper conduct brought to their attention or that they discover themselves during their investigation)

7022-8300 Waiver of challenges or objections

Connecticut Foundry Company **247 NLRB No. 145**
(E who signed agreement in which U agreed that *We will not restrain or coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* (not conventional request to proceed) waived its rights to have election set aside due to ULP's which were part or could have been part of settlement agreement it entered into with U, thereby enabling election to take place before end of posting period, effectively waived its right to protest U's ULP's committed prior to execution of agreement)

7033 HEARING ON CHALLENGES AND OBJECTIONS

7033-0100 Generally

Chef's Pantry, Inc. **247 NLRB No. 018**
withdrawal of objection to election did not preclude consideration of refusal to bargain allegation, or any conduct alleged in remaining objections which relates to it; pleadings fully apprised E of matters to be litigated and GC opened no *new areas* at hearing which were not covered by amended consolidated complaint, extant charges upon which it was based, and objections to be heard)

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**
(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with quasi about it, concerning which cts should not interfere save for the most glaring discrimination or abuse* however, if party demonstrates by prima facie evi-

7033-0100—Cont.

dence existence of *substantial and material factual issues which if resolved in its favor, would require setting aside election* hearing is required)

7033-1100 Required where substantial and material issues of fact

Evans Rotork, Inc. **251 NLRB No. 073**
(only required where moving party presents *prima facie* showing of issues which would warrant setting aside election)

Cumberland Nursing & Convalescent Center (Retail Store Employees Union, Local 692) **248 NLRB No. 063**
(objection by E to consent election, overruled and did not warrant hearing where E failed to present *prima facie* case in support of his objections which alleged, *inter alia*, objectionable electioneering; proffered evidence failed to disclose unequivocally that polls were in part open at time electioneering took place; it was not certain where Ees were at time alleged prohibited conduct was supposed to have occurred)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(hearing was not required on whether alleged misrepresentation had impact on election and whether attributable to U since no material issues of fact existed where E failed to come forward with specific evidence to refute RD's finding that statement did not affect Ees' votes)

The Cyril and Julia C. Johnson Memorial Hospital v. N.L.R.B. **595 F.2d 1208**
(no hearing required where *conclusionary allegations were insufficient to present substantial and factual issues*, no issue of credibility involved and decision turned on inferences to be drawn from undisputed facts)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges*; where factual issues unresolved not substantial or material, hearing not required)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(Bd acted w/i discretion when it refused to hold hearing where facts presented by objecting party, even if credited, would not warrant setting election aside)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(no statutory requirement for post-election evidentiary hearing on objections and unless there are substantial and materials issues of fact; Bd's own investigation is sufficient; and here E's contention that Bd agents failed to follow case handling manual concerning handling of challenged ballots in minor respects does not warrant setting aside election)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

El Monte Tool and Die Casting, Inc. v. N.L.R.B. **633 F.2d 160 (C.A. 9, 1980)**
(refusal to grant evidentiary hearing not in error where E failed to present prima facie evidence of substantial and material effect of erroneous statements on election process but instead showed misrepresentations made)

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**
(hearing on objections to election not required where E, seeking to void Bd conducted election, did not supply *prima facie* evidence presenting substantial and material factual issues which would warrant setting election aside; E cannot demand evidentiary hearing simply to inquire further into unspecified possible election improprieties)

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**
(party challenging election has heavy burden to show coercion took place and is not entitled to evidentiary hearing unless it supplies prima facie evidence presenting substantial and material factual issues which would warrant setting aside election)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(hearing not required in every case to determine validity of objections to Bd-conducted election)

7066 EXCEPTIONS TO REPORT AND BRIEFS

7066-4000 Service

Auto Chevrolet, Inc. **249 NLRB No. 070**
(in order to maintain orderly processing of R cases, there must be adherence to Bd's R/R, and time requirements in R/R will not be ignored on singular ground that party has not produced any evidence that it was prejudiced by another party's failure to comply with service requirements)

7066-6000 Adequacy

The Nyack Hospital **248 NLRB No. 043**
(hearing officer's recommendation to sustain objection adopted pro forma where objection was only to recommendation that election be set aside and new election ordered rather than to resolution of objection on merits)

7066-8000 Effect of failure to file

Prestolite Wire Division, Eltra Corporation **251 NLRB No. 132**
(absence of exceptions to RD's ruling that objections be overruled removes those objections from further consideration)

7077 DECISION ON OBJECTIONS OR CHALLENGES

7077-4000 Review of Regional Director's decision

7077-4025 Effect of consent election agreement

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where parties incorporated Norris-Thermador lists by reference into consent election agreements rather than describing the units, Bd found that they had consented to requirement that decertification elections be held in previously recognized units, and that units described in the ptns conformed to existing contractual units with minor variances)

7077-4033 Grounds for request to Board

7077-4033-3000 Change in Board policy or law

Gaithersburg-Washington Grove Fire Dept., Inc. **251 NLRB No. 045**
(remand to RD for hearing to determine if E now has sufficient control over employment relations to enable it to bargain where new county regulations are radically different from those under which original decision rendered)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(where RD made decision on objections to elections using *Hollywood Ceramics* standard and Bd later adopted less stringent *Shopping Kart* standard before returning to former standard and Bd's adoption of RD's decision occurred under latter standard, *Shopping Kart*; no denial of due process where Bd merely adopted report as written as it is not assumed that Bd considered objection under standard other than that used by RD)

7077-4033-6000 Prejudicial procedural error

Monier Roof Tiles **249 NLRB No. 092**
(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

7077-6000 Decision by Board

7077-6017 Remand for hearing

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **253 NLRB No. 029**
(case remanded to ALJ for purpose of conducting further hearing on issue of E's objection to election under *General Knit of California, Inc.*, 239 NLRB 619, where ALJ relied solely on formal papers submitted in R proceeding in analyzing E's objection and resolved the case entirely on application of standard set out in *Shopping Kart Food Market, Inc.*, and, on last day of hearing in the R proceeding, w/o knowledge of parties to the R proceeding, Bd, in *General Knit of California, Inc.*, overruled *Shopping Kart Food Market, Inc.*)

7077-6033 Remand for revised tally

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(where R case consolidated with C cases for limited purpose of taking evidence on challenged ballots, RD ordered to open ballots of Ees held eligible and issue certification if U received majority, where U never filed objections to election, notwithstanding E held to have committed ULPs)

7077-6050 Direction of another election

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(where challenged ballots were determinative in election, objections to which were found meritorious, RD directed to open and count challenged ballots and to issue certification of representative if revised tally shows U majority; in event tally shows no majority, RD directed to set aside election and direct second election)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(at such time as RD deems appropriate)

Custom Coating & Laminating Corporation **249 NLRB No. 117**
(directed where E violated Sec. 8(a)(1) by engaging in surveillance, creating impression of surveillance, threatening plant closure and discharge together with promises of improved working conditions)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

The Nyack Hospital **248 NLRB No. 043**
(where there are three choices on ballot and none receives majority, election is inconclusive)

7077-6050—Cont.

Louis Gallet, Inc. **247 NLRB No. 013**
(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

7077-6083 Certification of representative

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(where challenged ballots were determinative in election, objections to which were found meritorious, RD directed to open and count challenged ballots and to issue certification of representative if revised tally shows U majority; in event tally shows no majority, RD directed to set aside election and direct second election)

7077-6091 Consideration of conduct not included in objections

North American Car Corporation **253 NLRB No. 128**
(contention conduct objectionable not considered on merits where raised for first time in exceptions)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(Bd may consider ULPs committed subsequent to election in determining whether to issue bargaining order as they demonstrate E's continued opposition to unionization)

7077-6095 Disposition of objections to election

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where it determined consent election agreement was not inadequate, Bd remanded case to RD for disposition of objections to election including allegation that discrepancy between units in notices of election and Norris-Thermador lists in consent election agreement confused Ees and for investigation and determination as to effect of omission of classifications in technical unit composition in Norris-Thermador lists)

7088 RECORD

7088-3300 R&R 102.69(g)

Keystone Metal Moulding Company **249 NLRB No. 075**
(affidavits of E taken by RD during investigation of objections to election considered by Bd upon remand after finding by ct; Bd must make decision based on complete record)

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. **622 F.2d 1195 (C.A. 4, 1980)**
(where RD determines that objections to election do not require hearing, RD, and not objecting party, is responsible for transmitting *whole* record (all evidence considered in reaching decision) to Bd for its review on appeal, notwithstanding R/R 102.69(g) places responsibility for submission of documents on objecting party)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(failure of RD to include affidavits obtained during investigation of objections to election in file as part of record on review is not *per se* basis for setting aside report)

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(failure to include affidavits in record is harmless error where E included contents of affidavits in his exceptions to RD's report and documents were adequately summarized in E's Request for Review)

7088-6700 Does not include investigatory files

El Monte Tool and Die Casting, Inc. v. N.L.R.B. **633 F.2d 160 (C.A. 9, 1980)**
(where official record compiled by Bd did not include in its table of contents Ee affidavits, not conclusive that Bd did not consider affidavits where NLRB attorney prepared them and information contained in Bd's D/O appeared in affidavits)

8000 UNIT CLARIFICATION PROCEDURE

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(during mid-term contract negotiations Bd would refuse to entertain mid-term U C ptn to exclude alleged supervisors where parties were aware of unit placement problems when contract executed; to do so would be disruptive of established bargaining relationships)

Shop Rite Foods, Inc. **247 NLRB No. 143**
(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israel Medical Center, 231 NLRB 295 (1977)*; ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarity unit established by agreement of parties)

9000 AMENDMENT OF CERTIFICATION PROCEDURE

400 BARGAINING UNITS

401 GENERALLY

1200 STATUTORY OBJECTIVES IN DEFINING BARGAINING UNITS

2500 POWER AND DISCRETION OF BOARD

2501 GENERALLY

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(issue as to what unit is appropriate for bargaining involves, of necessity, large measure of informed discretion; no absolute rule of law is laid down by statute, and none should be by decision)

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(Bd's decision on appropriateness of single restaurant of nation-wide chain being appropriate unit, not arbitrary or capricious where Bd's findings and conclusions were supported by substantial evidence and in accordance with law)

2525 BOARD AUTHORITY UNDER STATUTE

Big Y Foods, Inc. **251 NLRB No. 123**
(E's contention that Bd had not fulfilled its statutory duty to make unit determination in its Decision and Direction of Elections and summary judgment fails because of new issue that could not have been previously raised held w/o merit; Bd had found that either Unit A *or* Unit B was appropriate, and therefore affirmative duty placed on Bd by Sec. 9(b) was not violated by allowing Ees to express their desires in elections)

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(issue as to what unit is appropriate for bargaining involves, of necessity, large measure of informed discretion; no absolute rule of law is laid down by statute, and none should be by decision)

2550 ARBITRARY OR ARTIFICIAL GROUPINGS

Trustees of University of Pennsylvania **247 NLRB No. 132**
(E's voluntary recognition of arbitrary grouping of Ees held insufficient justification for exluding similarly classified Ees, thereby splintering Ees who have common community of interest evidenced by centralized hiring procedures, personnel policies, benefits, and labor relations, and by performance of similar duties)

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

2575 LIMITATIONS UPON AUTHORITY IMPOSED BY NLRA

2575-1400 Professional employees

2575-1450 May not be included in unit with nonprofessionals without selfdetermination election (See also 177-2484-9300)

Harborcreek School for Boys **249 NLRB No. 177**

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*designer* at manufacturer and distributor of children's clothing excluded from unit of production and maintenance Ees and ineligible to vote since professional Ee)

2575-2800 Guards

2575-2825 May not be included in unit with other employees

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(individual ineligible to vote since held guard and excluded from unit where he opens up plant before work and closes at end of day, *watches* Ees while in plant, punches and signs time cards where corrections necessary, inspects handbags of Ees leaving plant, and requests unauthorized persons to leave plant)

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1980)**
(remanded for reconsideration of question of whether Ees known as *Operator/Runners* were guards w/i meaning of Sec. 9(b)(3) where Bd had determined Ees were not guards on basis of R hearing only, did not consider relevant information introduced at ULP hearing on related charge and avoided addressing inconsistency between classification of Ees in present case and Ees with same title in three Bd decisions involving same E, notwithstanding Bd's argument that R/R Sec. 102.67(f) required party to produce all available evidence at R hearing rather than attempt to relitigate unit issue at ULP hearing)

2575-2850 Union admitting employees other than guards to membership may not represent guards

MDS Courier Service, Inc. (Teamsters Local No. 150) **248 NLRB No. 181**
(U which represented non-guards may not represent drivers who transported packages typically containing documents mortgage papers, engineering specifications and sealed pouches which might contain bank deposits, bearer bonds and jewelry since Ees held guards where employed to protect valuable property of E's customers; notwithstanding not armed, not required to wear uniforms, and deliveries made in privately owned vehicles)

3700 EFFECT OF ACTION BY OTHER AUTHORITIES

3775 FEDERAL AGENCY ACTION

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**
(deferral to rulings by IRS and EEOC that lessee taxicab drivers were independent contractors, unwarranted since Bd's determination was based on record developed after hearing in which parties participated, presented evidence and cross-examined witnesses)

5000 EFFECT OF STIPULATIONS BY PARTIES TO BOARD PROCEEDINGS

5050 STIPULATIONS BY PARTIES NOT INCLUDING RD

5050-0100 Generally

Valley View Hospital **252 NLRB No. 160**
(it is settled Bd policy to accept stipulations from parties as to composition of unit, unless such stipulations are contrary either to statutory provisions of Act, or established Bd policy)

5050-6700 Stipulations as to composition

Valley View Hospital **252 NLRB No. 160**
(GC's mtn for summary judgment denied where RD had found unit including RNs appropriate in view of stipulation of parties; however, there was no testimony at R hearing which would indicate RNs were technical Ees, or performed duties different from those implied in their job classification, and stipulation alone cannot override mandate of 9(b) requiring professional Ees to vote on inclusion in unit with non-professional Ees)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(ct concluded Bd erred in its determination that drivers should be included in unit since parties had agreed to drivers exclusion and at oral argument Bd agreed drivers should be excluded)

5075 STIPULATIONS IN CONSENT AGREEMENT APPROVED BY RD

5075-3300 Stipulations as to scope

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(Bd may give same effect to stipulation in R case that Es were joint Es as it gives to litigated determination)

7500 CRITERIA FOR DETERMINATION OF UNIT SCOPE AND COMPOSITION

7500—Cont.

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P&M Ees of printing and lithographic presses and associated devices employed in (E's) pressroom* in view of their separate representation by Intervenor for over 25 years; Petitioner was attempting to replace U which had represented traditionally appropriate unit)

7550 EMPLOYEE COMMUNITY OF INTEREST CONTROLLING

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**
(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules, payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

8700 EFFECT UPON DETERMINATION OF IMMINENT CHANGE IN EMPLOYER'S OPERATION

420 FACTORS RELEVANT TO DETERMINATION OF SCOPE OR COMPOSITION OF UNIT

0100 GENERALLY

0600 PRIOR UNIT DETERMINATION

1200 BARGAINING HISTORY AND PRACTICE

1236 EMPLOYEES EXCLUDED FROM CONTRACT COVERAGE

Classic Truck Rental Corp. **251 NLRB No. 056**

(agreement held not to cover drivers' helpers, even though helpers were mentioned in preamble of drivers' contract, where preamble was purely boiler-plate language; only drivers' wages were specified in body of agreement and no mention was made of other Ee classifications described in preamble; and, pursuant to U's general practice in agreements with other Es, Ee classifications mentioned in preamble but not assigned wage scale in contract are not included in unit)

1245 BARGAINING HISTORY OF EMPLOYER'S PREDECESSOR

Stroehmann Brothers Company **252 NLRB No. 139**

(shipping Ees in company that distributed bake goods held appropriate unit, contrary to E's contention that these Ees should be included in established unit of route salesman, over-the-road drivers, and mechanics of competing U, where shipping Ees historically were in separate unit of another U and sale of business to new E would not alter this since shipping Ees were homogeneous group with separate supervisors employed different skills, had no apparent on-the-job contract with Ees of established unit, and never performed work of Ees in other unit)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**

(presumption of continuing majority notwithstanding predecessor E's recognition of U was forty years ago and there has been no subsequent election or certification)

1295 VOLUNTARY RECOGNITION

Trustees of University of Pennsylvania **247 NLRB No. 132**

(E's voluntary recognition of arbitrary grouping of Ees held insufficient justification for exluding similarly classified Ees, thereby splintering Ees who have common community of interest evidenced by centralized hiring procedures, personnel policies, benefits, and labor relations, and by performance of similar duties)

1700 REASONS FOR DISREGARD OF BARGAINING HISTORY

2300 CHANGED CIRCUMSTANCES SINCE PRIOR DETERMINATION OR HISTORY

2310 IN OWNERSHIP

Stroehmann Brothers Company **252 NLRB No. 139**

(shipping Ees in company that distributed bake goods held appropriate unit, contrary to E's contention that these Ees should be included in established unit of route salesman, over-the-road drivers, and mechanics of competing U, where shipping Ees historically were in separate unit of another U and sale of business to new E would not alter this since shipping Ees were homogeneous group with separate supervisors employed different skills, had no apparent on-the-job contract with Ees of established unit, and never performed work of Ees in other unit)

2360 MERGER OF FORMER UNITS

Sears, Roebuck and Co. **253 NLRB No. 025**

(one store, rather than 2-store unit, appropriate, notwithstanding claim that units had been merged by parties' conduct, where there was no evidence that parties had mutually agreed to extinguish separateness of units, in view of contract provisions covering both stores leading to inference that, despite negotiation of single contract, parties did not contemplate creating single unit; moreover, each store operated as self-contained unit with no operational interchange between them and, in absence of specific language to the contrary, inference cannot be drawn that parties agreed to extinguish separate units)

2370 NEW PLANT OR LOCATION

Monongahela Valley Hospital, Inc. **248 NLRB No. 013**

(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

2900 SIMILARITY OF TERMS AND CONDITIONS OF EMPLOYMENT

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees have working conditions different from those of other Ees on ground annotations in Ee handbook reflected both special requirements of CETA and recognition by E of different status of CETA Ees, rejected, where few changes were made in handbook, and those made were minor; no changes were made in key areas of conditions of employment; and extra grievance procedure provided for CETA Ees was never utilized by any CETA Ee)

2903 SIMILAR WAGE RATES

The Folger Coffee Company **250 NLRB No. 001**

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

2906 DIFFERENT WAGE RATES

Century Moving & Storage, Inc. **251 NLRB No. 083**

2912 DIFFERENT MODE OF PAYMENT

Century Moving & Storage, Inc. **251 NLRB No. 083**

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

2915 SIMILAR HOURS OF WORK

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

2921 SIMILAR FRINGE BENEFITS

The Folger Coffee Company **250 NLRB No. 001**

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

2927 UNIFORM WORKING CONDITIONS

2927—Cont.

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules, payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

The Folger Coffee Company **250 NLRB No. 001**

2933 COMMON SUPERVISION

The Folger Coffee Company **250 NLRB No. 001**

2936 SEPARATE SUPERVISION

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

2948 SEPARATE SENIORITY LISTS

Century Moving & Storage, Inc. **251 NLRB No. 083**

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

2993 SIMILAR RELATIONSHIP WITH EMPLOYER

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

2996 DIFFERENT RELATIONSHIP WITH EMPLOYER

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

3400 CHARACTERISTICS OF EMPLOYEES

4000 EMPLOYER'S ADMINISTRATIVE STRUCTURE

4600 EXTENT OF INTEGRATION OF OPERATION

5000 EXTENT OF CONTACT BETWEEN EMPLOYEES

5034 LITTLE OR NO INTERCHANGE OR TRANSFER OF EMPLOYEES

Century Moving & Storage, Inc. **251 NLRB No. 083**

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

5600 FREQUENCY OR REGULARITY OF WORK

6200 DIFFERENCE IN EMPLOYER OR IN LOCATION OF WORK

6260 EMPLOYEES WORK AT DIFFERENT PLANTS OR LOCATIONS

Pickering & Company (Local 810, Teamsters) **248 NLRB No. 099**

(unit of all production maintenance and warehouse Ees at two facilities of E which manufactures audio equipment rather than production maintenance and warehouse Ees at one facility since presumption of appropriateness of single plant unit rebutted where geographical separation minimized by frequent E furnished transportation and in view of high degree of production integration and common management of administrative and production matters common benefits and seniority, notwithstanding lack of day-to-day interchange of Ees)

Commercial Testing & Engineering Co. (Teamsters, Local Union 175) **248 NLRB No. 096**

(2 Ees performing same work as other unit Ees though at facility 20 miles away and receiving same benefits and wages and having same supervision included in unit)

6280 GEOGRAPHICAL LOCATION OF PLANTS

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

6290 GEOGRAPHIC CLUSTER

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

6700 LEGAL REQUIREMENTS OF OTHER AUTHORITIES

7300 DESIRE OF PARTIES OR OF EMPLOYEES

7303 UNIT SOUGHT BY PETITION

La Crosse Printing Company, Inc. **249 NLRB No. 027**

(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P&M Ees of printing and lithographic presses and associated devices employed in (E's) pressroom* in view of their separate representation by Intervenor for over 25 years; Petitioner was attempting to replace U which had represented traditionally appropriate unit)

7312 STIPULATION BY PARTIES

La Crosse Printing Company, Inc. **249 NLRB No. 027**

(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

La Crosse Printing Company, Inc. **249 NLRB No. 027**

(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P&M Ees of printing and lithographic presses and associated devices employed in (E's) pressroom* in view of their separate representation by Intervenor for over 25 years; Petitioner was attempting to replace U which had represented traditionally appropriate unit)

7384 NO UNION SEEKS SEPARATE UNIT

Keeshin Charter Service, Inc. **250 NLRB No. 117**

7384—Cont.

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

7900 ANTICIPATED CHANGES IN WORK CIRCUMSTANCES

7950 SUBSTANTIAL INCREASE IN SIZE OF UNIT PLANNED

Whitteman Steel Mills, Inc. **253 NLRB No. 041**

(E found to employ substantial and representative work force where at time of R hearing it employed 54 Ees in 15 job classifications of planned projection of 149 Ees in approximately 36 classifications 4 to 5 months out; furthermore, w/i 30 days of hearing E plans to employ 22 of the additional Ees in 6 additional job classifications; E's plans to expand to 250 in 2 years too indefinite to use to measure substantiality of work force as equipment must be ordered and construction has not started)

8400 AVOIDANCE OF INCONGRUOUS RESULTS

8417 EXCLUSION OF EMPLOYEES WITH SKILLS OR INTERESTS SIMILAR TO THOSE OF EMPLOYEES INCLUDED

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

8429 AVOIDING LEAVING EMPLOYEES WITHOUT REPRESENTATION

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

9000 MULTIEMPLOYER UNIT DETERMINATION FACTORS

9600 MISCELLANEOUS OTHER FACTORS

9620 DECERTIFICATION PETITION

American Recreation Centers, Inc., d/b/a Mel's Bowl (Hotel & Restaurant Employees, Local 28, AFL-CIO) **250 NLRB No. 142**

(Bd directed decertification election in unit of bartenders at restaurant, where operator leased restaurant part of operation to lessee; even though lessee signed same restaurant association agreement to which lessor was signatory and which included bar and restaurant Ees in same unit, bar and restaurant were operated as independent businesses, and unit was severed when lessor leased restaurant to lessee who independently contracted for restaurant Ees, and U acquiesced in de facto separation of bar and restaurnat Ees)

9698 CONTROL OVER HIRING

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

440 DETERMINATIONS OF SCOPE OF UNIT

1700 SINGLE LOCATION UNITS

1720 PLANTWIDE UNITS

1720-0100 Generally

1720-0133 Presumptive appropriateness

Penn Color, Inc. **249 NLRB No. 151**
(presumption favoring single-plant unit not rebutted and request for such unit granted, in view of sufficiently autonomous supervision at each of E's two plants, lack of significant Ee interchange, absence of any bargaining history among unit Ees, and fact that no labor organization seeks to represent Ees on broader basis)

1720-3300 Specific unit determinations (by SIC category)

Clinton Corn Processing Company, A Division of Standard Brands, Inc. **251 NLRB No. 133**
(overall unit rather than petitioned-for unit limited to utility Ees at corn milling operation appropriate where corn milling operation was highly integrated production process in which there existed substantial functional and operational integration among Ees who shared communities of interest of such magnitude as to preclude placing utility Ees in separate unit)

Print-O-Stat, Inc. **247 NLRB No. 047**
(unit of all Ees including Ees in purchasing, estimating, repair, and customer service departments, outside salesmen, inventory control clerk, at main plant of E engaged in printing and retail distribution of architectual engineering supplies and office furniture, appropriate, rather than unit limited to production Ees, notwithstanding contention insufficient community of interest, in view of overall common supervision and frequent contacts among departments and job interchangeability)

Yaohan of California, Inc. **252 NLRB No. 050**
(unit of all Ees at retail grocery store including meat department Ees held appropriate since meat department Ees did not perform skilled tasks of meatcutting traditionally performed by butchers and meatcutters which is indicative of separate community of interest but instead worked with boxed meats)

1720-6700 Placement of employees in plantwide unit (by SIC category)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(Ee who during crucial period of contract signing spent 70% of his time in production tasks for E engaged in asphalt road-sealing work included in unit, notwithstanding he was salaried, was present at contract talks (although he did not participate), and later concentrated on sales and estimates rather than production)

Print-O-Stat, Inc. **247 NLRB No. 047**
(unit of all Ees including Ees in purchasing, estimating, repair, and customer service departments, outside salesmen, inventory control clerk, at main plant of E engaged in printing and retail distribution of architectual engineering supplies and office furniture, appropriate, rather than unit limited to production Ees, notwithstanding contention insufficient community of interest, in view of overall common supervision and frequent contacts among departments and job interchangeability)

Yaohan of California, Inc. **252 NLRB No. 050**
(unit of all Ees at retail grocery store including meat department Ees held appropriate since meat department Ees did not perform skilled tasks of meatcutting traditionally performed by butchers and meatcutters which is indicative of separate community of interest but instead worked with boxed meats)

Great Day, Inc. (Retail Store Employees Union, Local No. 20) **248 NLRB No. 079**
(inclusion of full-time meat department Ees in storewide unit of retail grocery store Ees, rather than separate unit of such Ees, appropriate, where they substantially interchange with other Ees, lack traditional meatcutting skills, are supervised by E's president and store manager as are other Ees, and have same uniform job and wage classifications, benefits and working conditions as other ees)

1740 Plant subdivision units

1740-5000 Departmental units (See 440-1760, for departmental units defined by employee types or category)

1740-5025 Specific determinations (by SIC category)

The Concord Telephone Company **248 NLRB No. 044**
(separate unit of full-time and regular part-time Ees of telephone company's plant department, rather than systemwide unit combining plant department with E's traffic and commercial departments, appropriate, in view of plant department's distinct functional integration and fact that Ee complement of plant department is not so small as to warrant finding only system wide unit appropriate)

Anaheim Operating, Inc., d/b/a Sheraton-Anaheim Hotel **252 NLRB No. 134**
(unit limited to operating engineers, maintenance Ees and their helpers, and painters employed exclusively in hotel's engineering department, rather than hotelwide unit, held appropriate where Ees in engineering department shared community of interests separate from that of E's other Ees and there was absence of bargaining history on broader unit basis)

1760 EMPLOYEE TYPE OR CATEGORY UNITS

1760-0500 Production employees unit

1760-0560 Placement of production employees in other unit (by SIC category)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

1760-0580 Placement of other employee in production unit (by SIC category)

International Business Systems, Inc. **247 NLRB No. 102**
(stockboy who performed duties unrelated to lithographic process on regular basis, included in lithographic unit at E engaged in manufacture of business forms, since he actually functioned as pressroom helper)

G. F. Business Equipment, Inc. **252 NLRB No. 123**
(purchasing clerk excluded from unit of production Ees where she is salaried, does not punch time clock, free to determine own break time, works in main office typing purchase orders for Ees who are not in unit; also contacts with unit Ees minimal)

G. F. Business Equipment, Inc. **252 NLRB No. 123**
(production control clerk excluded from production Ees unit where: training was with non-unit Ees, salaried, no scheduled breaks, responsible for departmental records, works in main office; moreover, despite fact that her clerical function are related to production her community of interest is with office clerical Ees)

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**
(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules, payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

1760-1000 Maintenance employees unit

1760-1060 Placement of maintenance employees in other unit (by SIC category)

Purnell's Pride, Inc. **252 NLRB No. 018**
(maintenance Ees included in unit of production Ees in light of regular contact of both groups, transfers between departments, other interchange and also maintenance department is located at processing facility)

1760-1500 Production & maintenance unit employees unit

1760-1580 Placement of other employees in P&M unit (by SIC category)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(office porter at yarn producing facility held office clerical and excluded from unit of P & M Ees where porter spends less than an hour a day in

1760-1580—Cont.

plant, his contact with unit Ees is minimal, his primary duties are performed either in front office or away from plant, and his schedule is different from that of unit Ees)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

(*testers* performing simple, easily-learned manual quality control work included in P&M unit)

Avon Products, Inc. **250 NLRB No. 141**

(all representative service department Ees except department secretary and secretarial, office supply and cash sale clerks included in P&M unit at cosmetic manufacturer's branch operation in view of involvement in single highly integrated order-flow process and facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**

(secretarial clerk in representative service department, department manager's secretary and administrative clerks in packaging department, and all department secretaries in all departments excluded from P&M unit at cosmetics manufacturers' branch operation as office clericals)

Avon Products, Inc. **250 NLRB No. 141**

(office supply and cash sales clerks in representative service department excluded from P&M unit at cosmetics manufacturer's branch operation where they play no role in order flow process and are physically separated from unit Ees)

Avon Products, Inc. **250 NLRB No. 141**

(data processing department Ees and transportation department dispatcher, expediting clerk typist, transportation coordinator and correspondent, and order-service, lost-order, cost-and-tonnage, and transportation clerks included in P&M unit at cosmetics manufacturer's branch operation as plant clericals in view of involvement in order flow process, contacts and interchange with unit Ees and facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**

(visual order entry (VOE) operators in data processing department and (VOE) terminal operators in merchandise control and material handling departments included in P&M unit of cosmetics manufacturer's branch operation in view of interchange and work-related contact with unit Ees and central role in order flow process)

Avon Products, Inc. **250 NLRB No. 141**

(line balance clerk, mechanical assembly operator, and merchandise assembly clerk in shipping department included in P&M unit of cosmetics manufacturer's branch operation in view of repeated daily contact with unit Ees, and facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**

(dock loader, stacker/strapper and scaler/labeler in transportation department included in P&M unit at cosmetics manufacturer's branch operation as production Ees)

Avon Products, Inc. **250 NLRB No. 141**

(cost accounting, planning, accounts payable, and perpetual inventory clerks in inventory, cost and planning department included in P&M unit at cosmetics manufacturer's branch operation as plant clericals in view of jobs related to order flow process and contact with unit Ees)

Avon Products, Inc. **250 NLRB No. 141**

(management shipment coordinator and merchandise expediter in merchandise control department included in P&M unit at cosmetics manufacturer's branch operation as plant clericals in view of job function and role in order flow process; all other merchandise department Ees included as production, maintenance or plant clerical Ees)

Avon Products, Inc. **250 NLRB No. 141**

(terminal operators, clerk manifest, and warehouse control and receiving control clerks and inventory control analyst in material handling department included in P&M unit at cosmetics manufacturer's branch operation in view of daily contact with unit Ees and facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**

(all processing department Ees, all packaging department Ees except secretaries and administrative clerks, all quality assurance department Ees except secretaries and chemists, and all engineering department Ees except secretary included in P&M unit of cosmetics manufacturer's branch operation as determined by RD)

Avon Products, Inc. **250 NLRB No. 141**

(expediters, master record, container records, and manifest clerks in production control department included in P&M unit at costmetics manufacturer's branch operation where they share facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**

(all industrial engineering and purchasing department Ees excluded from P&M unit at cosmetics manufacturer's branch operation for lack of community interest as found by RD)

Avon Products, Inc. **250 NLRB No. 141**

(tour hostesses employed only as tour hostesses excluded from P&M unit at costmetics manufacturer's branch operation; however, tour hostesses holding regular full-time positions in addition to their tour hostess duties should have their status in unit determined by whether or not their full-time position has been included in unit found appropriate herein)

Penn Color, Inc. **249 NLRB No. 151**

(quality control and research and development technicians at plant engaged in production of color concentrates excluded from P&M unit, where supervision of P&M Ees is totally different from that of technicians; there is no interchange between P&M Ees and technicians; while technicians have option of being paid on salary basis, P&M Ees are compensated on hourly rate; basis for and frequency of promotions are different; and there are different requirements regarding education background and on-the-job training)

Whitteman Steel Mills, Inc. **253 NLRB No. 041**

(laboratory technicians not included in unit of P&M Ees where lacked sufficient community of interest and will perform some duties as laboratory technicians excluded from P&M unit previously represented by another U)

1760-1900 Office clerical employees unit

1760-1940 Specific determination (by SIC category)

Stroock & Stroock & Lavan **253 NLRB No. 052**

(stipulated unit of clerical and support staff of 2 law firms that merged and combined these staffs at one location, appropriate)

1760-1960 Placement of office clerical employees in other unit (by SIC category) (See also 440-1760-2400)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(*billing clerk* and individual who filed and operated office equipment at manufacturer and distributor of children's clothing held to be ineligible to vote since w/i office-clerical exclusion from warehouse unit notwithstanding they performed some of their duties in warehouse building)

1760-1980 Placement of other employees in office clerical unit (by SIC Category) (See also 440-1760-2800)

ITT Grinnell **253 NLRB No. 077**

(accounts receivable collection coordinator not included in office clerical Ees unit notwithstanding he can make only recommendations with regard to customer's credit level, where 60% of his time spent resolving payment disputes and this involves customer contact and independent judgment)

ITT Grinnell **253 NLRB No. 077**

(credit escalation analyst excluded from unit of office clerical Ees and found technical Ee where she is responsible for functions requiring specialized training and independent judgment; moreover she is salaried, has 2-year degree in accounting and no interchange with other unit Ees)

ITT Grinnell **253 NLRB No. 077**

(secretary to assistant plant manager found confidential Ee and excluded from office clerical unit; manager has significant responsibility for formulation and effectuation of labor relations policy and she has sole responsibility for his filing and typing)

ITT Grinnell **253 NLRB No. 077**

(secretary to engineering supervisor whose job description contains no duties concerning personnel matters or formulation of labor relations policy and possibility of such duties only speculative found not confidential secretary and included in unit)

ITT Grinnell **253 NLRB No. 077**

(property accountant, aid to confidential secretary found not to be confidential secretary and included in unit of office clerical Ees whére none of her work involved labor relations and future possibilities only speculative)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(bookkeeper at insurance company excluded from unit since he lacked community of interest with other clericals in view of disparity between his salary and prevailing wage in clerical unit, his flexible working time, and lack of managerial supervision over his daily routines)

Stroock & Stroock & Lavan **253 NLRB No. 052**

(paralegals excluded from unit of office clericals notwithstanding they share common working hours and fringe benefits where their duties require analytic skills, supervisory structure is different, no daily interchange, clients are billed for paralegals time, and position treated as preparation for law school)

Stroock & Stroock & Lavan **253 NLRB No. 052**

(law office librarians included in unit of office clericals where share working hours, same benefits and perform similar clerical functions)

1760-2400 Plant clerical employees unit

1760-2460 Placement of plant clericals in other unit (by SIC category) (See also 440-1760-2900)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**

(Ee found plant clerical not office clerical and included in bargaining unit where her duties are integral part of warehouse operation; 75% of her time spent on record keeping for warehouse Ees, office adjoins warehouse and is

1760-2460—Cont.

separate from office clericals, she goes onto warehouse floor to perform part of her duties, and shares same intermediate supervision, works same hours as warehouse Ees)

1760-3400 Technical employees unit

1760-3420 Identifying characteristics

1760-3420-0100 Generally

The Folger Coffee Company **250 NLRB No. 001**

1760-4000 Office, clerical, and technical employees combined unit

1760-4040 Specific unit determination (by SIC category)

Trustees of Tufts College **251 NLRB No. 108**

(unit of clerical and technical Ees at undergraduate and law campus excluding such Ees at graduate campus appropriate where undergraduate campus is 6 miles from graduate, employment practices and conditions of employment differ, day-to-day management of labor relations is separate, hiring is separate and also hospitalization coverage differs, almost no Ee interchange and no temporary Ee interchange)

1760-4080 Placement of other employees in office/clerical/technical unit (by SIC category)

Trustees of Tufts College **251 NLRB No. 108**

(nurses aide at campus infirmary included in unit where work situs, hours of work and on-the-job contacts with infirmary technicians and clericals provides sufficient community of interest)

Trustees of Tufts College **251 NLRB No. 108**

(former police officer employed as police clerk included in unit where his duties are basically clerical and he does not engage in police work)

Trustees of Tufts College **251 NLRB No. 108**

(vehicle taggers who issue parking tickets but do not perform police duties included in unit especially where excluded from voting with police unit)

1760-5300 Plant Protection and Protective Services Employees Unit

1760-5320 Identifying characteristics

1760-5320-0100 Generally

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(individual ineligible to vote since held guard and excluded from unit where he opens up plant before work and closes at end of day, *watches* Ees while in plant, punches and signs time cards where corrections necessary, inspects handbags of Ees leaving plant, and requests unauthorized persons to leave plant)

1760-5320-2500 Responsibility for protection of customer property

MDS Courier Service, Inc. (Teamsters Local No. 150) **248 NLRB No. 181**

(individuals held guards since they were employed to protect property of E's customers where as couriers they transported important papers, negotiable instruments and other valuables; notwithstanding, they were not armed, not required to wear uniforms and made deliveries in privately owned vehicles)

1760-5320-2800 Responsibility for protection of plant property

Electro-Protective Corporation of Georgia **251 NLRB No. 154**

(service Ees, employed by E which manufacture's, sells, installs and monitors burglar and fire alarm systems and provides its customers with other protective services, held guards and excluded from E's P&M unit, since they played significant protective role in services offered to E's customers; in carrying out their duties, they faced possibility of personal confrontation with intruders; cf. *Wells Fargo Alarm Services*, 218 NLRB 68 (1975), enfd 553 F.2d 121 (1976) where element of potential personal confrontation was not present)

1760-5320-4200 Armed, deputized, or uniformed

Electro-Protective Corporation of Georgia **251 NLRB No. 154**

(Ees who wore uniforms and were dispatched to customers premises after alarm set off and required to patrol premises preventing unauthorized entry or egress of property until police and/or customer showed up, held guards because of risk of personal confrontation)

1760-5320-5600 Control of access to, or movement about employer's property

Electro-Protective Corporation of Georgia **251 NLRB No. 154**

(Ees who wore uniforms and were dispatched to customers premises after alarm set off and required to patrol premises preventing unauthorized entry or egress of property until police and/or customer showed up, held guards because of risk of personal confrontation)

1760-5360 Placement of plant protection employees in other unit (by SIC category)

Kentucky Prince Coal Corporation **253 NLRB No. 070**

(watchmen excluded from unit of production Ees notwithstanding they perform some nonguard functions where majority of time spent guarding E's equipment, have keys which other Ees do not have access to, carry C-B radios and permitted to carry handguns)

Electro-Protective Corporation of Georgia **251 NLRB No. 154**

(service Ees, employed by E which manufacture's, sells, installs and monitors burglar and fire alarm systems and provides its customers with other protective services, held guards and excluded from E's P&M unit, since they played significant protective role in services offered to E's customers; in carrying out their duties, they faced possibility of personal confrontation with intruders; cf. *Wells Fargo Alarm Services*, 218 NLRB 68 (1975), enfd 553 F.2d 121 (1976) where element of potential personal confrontation was not present)

1760-6200 Drivers (including driver-salesmen) unit

1760-6240 Specific determination (by SIC category)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**

(drivers unit excluding miners and mechanics found appropriate where completely different nature of their duties and skills and only minimal amount of interchange between groups of Ees)

Liquid Transporters, Inc. **250 NLRB No. 163**

(permanent sleeper teams who lease their equipment to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as, other drivers for owneroperators who are Ees of E)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. **JD-441-80**

(truck drivers of single E constituted clearly identifiable and functionally distinct group who hauled to customers in construction sites and were thus distinguishable from Es' other Ees; no other Ees undertook hauling assignments for Es, and truck drivers, unlike Es' taxi drivers, were paid on hourly basis)

1760-6260 Placement of drivers in other unit (by SIC category)

Mitchell Bros. Truck Lines **249 NLRB No. 051**

(overall unit of owner-operators and non-owner operators of equipment leased by owners to E found appropriate)

1760-6280 Placement of other employees in drivers unit (by SIC category)

Cal-Maine Farms, Inc. **249 NLRB No. 133**

(shipping and receiving Ee not included in unit of truckdrivers at E engaged in production, processing, and distribution of shell eggs in view of lack of community of interests where separate supervision, infrequent contact, minimal job interchange, and different wage scales)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**

(drivers unit excluding miners and mechanics found appropriate where completely different nature of their duties and skills and only minimal amount of interchange between groups of Ees)

Wilson Engraving Company, Inc. **252 NLRB No. 048**

(inclusion of dual-function Ees in unit of city-drivers employed by manufacturer of photographic plates and color separations, appropriate where they performed similar delivery and pickups as included drivers during substantial portions of their working time; furthermore, these Ees shared community of interest in unit's wages, hours, and working conditions)

Wilson Engraving Company, Inc. **252 NLRB No. 048**

(dual-function Ees excluded from unit of city-drivers employed by manufacturer of photographic plates and color separations, where driving duties occupy less than twenty-five percent of their working time, thus lacking sufficient community of interest to warrant inclusion)

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

1760-6700 Warehouse Employees Unit

1760-6740 Specific determination (by SIC category)

Stanley M. Feil, Inc. **250 NLRB No. 065**

(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Sears, Roebuck and Co. **250 NLRB No. 074**

1760-6740—Cont.

(unit limited to parts department Ees rather than overall unit including repair department Ees of E engaged in receipt, warehousing, distribution, and repair of merchandise, held appropriate, where parts department Ees possess separate and distinct community of interest from Ees in repair department)

1760-6760 Placement of warehouse employees in other unit (by SIC category)

Cal-Maine Farms, Inc. **249 NLRB No. 133**
(shipping and receiving Ee not included in unit of truckdrivers at E engaged in production, processing, and distribution of shell eggs in view of lack of community of interests where separate supervision, infrequent contact, minimal job interchange, and different wage scales)

1760-6780 Placement of other employees in warehouse employees unit (by SIC category)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*billing clerk* and individual who filed and operated office equipment at manufacturer and distributor of children's clothing held to be ineligible to vote since w/i office-clerical exclusion from warehouse unit notwithstanding they performed some of their duties in warehouse building)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(warehouse driver not included in warehouse unit since he does not share community of interests where salaried, does not punch time clock, received different medical benefits, and in warehouse for only five hours a week)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(Ees who on occasion performed warehouse work not included in warehouse unit where basically Ees are office clericals)

1760-7200 Sales personnel (including driver- salesmen when grouped with sales personnel) unit

1760-7280 Placement of other employees in sales personnel unit (by SIC category)

Kardon Chevrolet, Inc. **249 NLRB No. 086**
(in decertification proceeding, part-time salesmen excluded from unit of full-time salesmen at auto agency, since parties mutually agreed to modify certified unit to exclude them where, upon original certification, executed contract eliminated any specific reference to part-time Ees; contract specifically prohibited hiring of part-time salesmen and created special status for current part-time salesman, which would not have been necessary if part-time salesmen were included in unit; and E has not hired any part-time salesmen since execution of contract)

1760-7600 Service employees unit

1760-7640 Specific determination (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(separate units of electric company's transmission and distribution stores department Ees and customer service department Ees, appropriate)

1760-7660 Placement of service employees in other unit (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

1760-7800 Service and maintenance employees unit

1760-7840 Specific determination (by SIC category)

Liquid Transporters, Inc. **250 NLRB No. 163**
(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

N.L.R.B. v. Continental Corporation of Michigan, Inc. d/b/a Holiday Inn West **612 F.2d 257 (C.A. 6)**
(although ct disagreed with wisdom of Bd's approval of small bargaining unit of hotel Ees, ct decided Bd could reasonably have found in its discretion that housekeeping, laundry and maintenance Ees made up proper unit, excluding Ees with different functions and different supervision; ct felt perhaps it would have been better to have single unit of all Ees, but that it was not ct's role to substitute its judgment for that of Bd)

Trustees of University of Pennsylvania **247 NLRB No. 132**
(unit of medical utility men and animal laboratory technicians at medical school of private university held inappropriate since unit is arbitrary grouping of nonprofessional Ees, and unit is inappropriate under Bd precedent concerning bargaining units at colleges and universities; E's voluntary recognition of such arbitrary grouping of Ees held insufficient justification for splintering Ees who have common community of interests)

1760-7900 Service and warehouse employees unit

1760-7980 Placement of other employees in service and warehouse unit (by SIC category)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*truckdrivers* of various types and styles of trucks used by two Es comprising single E included in single appropriate unit despite their lack of interchange; lack of interchange was no different than lack of interchange of job functions between Ees in any two job classifications)

1760-9100 Craft unit

1760-9133 Identifying characteristics

1760-9133-3400 Degree of skill possessed

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

1760-9133-4800 No need for special training or skill

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

1760-9167 Specific determination (by specific craft)

1760-9167-2400 Electricians

1760-9167-2467 Found inappropriate

Proctor and Gamble Paper Products Company **251 NLRB No. 077**
(separate unit of electrical support technicians at plant manufacturing sanitary paper products, inappropriate, since not craft unit, even though they are most highly skilled electricians at plant, perform electrical work 100 percent of time, and have separate supervision, work area, and promotion criteria, where substantial amount of electrical work is also performed by more than 200 other technicians, one-half of support technicians work is done in production areas where they function as a team with production technicians, they are not licensed nor journeymen electricians, and do not undergo formal apprenticeship)

Proctor and Gamble Paper Products Company **251 NLRB No. 077**
(separate unit of all electrical maintenance technicians at plant manufacturing sanitary paper products, inappropriate, where they primarily perform typical production, warehouse, or maintenance functions; have only limited electrical skills; spend only small part of time performing electrical work, and, hence, do not constitute or function as true craft electricians; moreover, not only do they cut across departmental lines, production and warehouse electricians normally work alongside technicians who have no electrical expertise whatever; and electrical work which they routinely perform is highly integrated with E's production process)

1760-9900 Other units defined by employee type or category, or combinations of such

1760-9940 Specific determination (by SIC category)

Stroehmann Brothers Company **252 NLRB No. 139**
(shipping Ees in company that distributed bake goods held appropriate unit, contrary to E's contention that these Ees should be included in established unit of route salesman, over-the-road drivers, and mechanics of competing U, where shipping Ees historically were in separate unit of another U and sale of business to new E would not alter this since shipping Ees were homogeneous group with separate supervisors, employed different skills, had no apparent on-the-job contact with Ees of established unit, and never performed work of Ees in other unit)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Calpine Containers, A California Corporation **251 NLRB No. 199**
(unit of all regular part-time and full-time P&M Ees and truckdrivers and forklift operators, excluding office clericals, at E's facility for warehousing and assembling agricultural-product packing boxes, appropriate, rather than unit of truckdrivers and forklift operators outside production area separate from P&M unit, where all Ees punch time clock, receive hourly pay, have same supervision, seniority list, break and lunch periods, and technological changes have resulted in highly integrated operation with frequent interchange of unskilled jobs so that bargaining history of separate units has little weight)

1760-9940—Cont.

Todd Pacific Shipyards Corporation (Driver Sales and Warehousemen, Teamsters Local 117, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousement and Helpers of America, Independent) **250 NLRB No. 138**

(unit of administrative Ees in purchasing and material control departments at shipyard, inappropriate where administrative Ees in all E's departments, rather than just those in purchasing and material control departments, are in constant contact and frequently transferred between departments, receive comparable wages and benefits for similar jobs, and are subject to common facility-wide personnel policy)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(separate units of electric company's transmission and distribution stores department Ees and customer service department Ees, appropriate)

Howard Johnson Company **250 NLRB No. 161**

(E's contention that unit of motel housekeeping Ees was inappropriate because it excluded, among others, front desk clerks, rejected, where case relied on by E is hereby overruled in view of later decisions cited by RD in his D/O directing election which fully supported his determination; *Howard Johnson Co.*, 201 NLRB 376, overruled)

Commercial Testing & Engineering Co. (Teamsters, Local Union 175) **248 NLRB No. 096**

(combined unit of preparation Ees and laboratory Ees in coal testing laboratory appropriate where tests performed on coal samples by each group, while different are functionally indistinct from each other, neither group required to have special skills; though tests performed in separate buildings and Ees use separate timeclocks, buildings are only 45 yards apart, contract between groups occur several times daily and wages and benefits approximately same)

Inverrary Country Club, Inc. **251 NLRB No. 155**

(separate unit of food and beverage department Ees, rather than unit also including several categories of manual operating Ees, at private membership club providing recreational facilities, appropriate in view of their separate and independent function, separate supervision, lack of interchange with operating Ees and fact that operating Ee's performance of food-service type functions was not regular or substantial)

Century Moving & Storage, Inc. **251 NLRB No. 083**

(unit of warehousemen, local drivers and helpers *excluding* long haul drivers held appropriate where long haul drivers had little contact with local drivers, different compensation and mode of compensation from local drivers, as well as different seniority roster from local drivers)

1760-9960 Placement of (subject) employees in (other) unit (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

1760-9980 Placement of (other) employees in (subject) unit (by SIC category)

Century Moving & Storage, Inc. **251 NLRB No. 083**

(unit of warehousemen, local drivers and helpers *excluding* long haul drivers held appropriate where long haul drivers had little contact with local drivers, different compensation and mode of compensation from local drivers, as well as different seniority roster from local drivers)

Alumbaugh Coal Corporation **247 NLRB No. 112**

(welder with separate contract terminable at E's will included in unit of P&M Ees and truckdrivers at coal mine where unit Ees were also terminable at will, like welder took E's vehicles home, and had similar pay, hours and benefits)

Alumbaugh Coal Corporation **247 NLRB No. 112**

(Ee performing work both as mechanic and laborer at filling station and mine of coal miner included in unit of P&M Ees and truckdrivers at coal mine in view of same hours, supervisors, holidays and benefits, and notwithstanding his lease of apartment over E's office where two other Ees also occupied company-owned apartments)

Dooley Equipment Corporation **JD-215-80**

(skilled part-time welder included in unit of mechanics and parts Ees notwithstanding has full-time employment elsewhere which he come to work when requested, used E's shop and equipment and occasionally worked with E's mechanics under same supervision)

Bel-Air Bowl, Inc. **247 NLRB No. 003**

(babysitters and janitors excluded from unit of mechanics, pin chasers, and desk clerks at bowling alley and restaurant, in view of dissimilarity of job skills and functions and lack of contact and exchange of tasks with unit Ees)

Rosemount Center **248 NLRB No. 163**

(CETA Ees at E's child day care facility included in unit of E's regular Ees where substantial similarities in wares, fringe benefits, and working conditions of E's non-CETA and CETA Ees, and Ees' integrated positions in E's staff weigh heavily in affording CETA Ees representation in same unit as E's regular Ees; neither indefinite length of employment of, nor additional benefits available to, CETA Ees preclude finding that they share sufficient community of interest with E's regular Ees)

Rosemount Center **248 NLRB No. 163**

(home mothers employed by child day care facility, who provide day care services in their homes, held to have sufficient community of interest with E's regular Ees to be included in unit since they are integral part of E's operation, perform same infant care work as performed at E's facility, are trained along with other infant care Ees, and are similarly supervised)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(Head Start program teachers and parent coordinators included in community action agency's E-wide unit absent evidence that they are supervisory or managerial, i.e., that they are on parent advisory council or that council controls program's personnel policies)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility, they do not attend management meetings and are not involved in formulation of goals and policies)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(CETA Ees employed by nonprofit community action agency included in E-wide unit, notwithstanding limited durationof their jobs, in view of their community of interest with other unit Ees and E's attempts to place them elsewhere after their CETA jobs have run out)

1780 OTHER EMPLOYEE GROUPINGS

1780-6000 Residual employee units

1780-6050 Appropriateness of residual employees

1780-6050-0100 Generally

Bel-Air Bowl, Inc. **247 NLRB No. 003**

(unit of mechanics, pin chasers and desk clerks excluding janitors and baby sitters at bowling alley and restaurant, appropriate rather than residual unit of all above Ees, in view of lack of sufficient community of interest of babysitters and janitors with mechanic, pin chasers, and desk clerks)

1780-8000 Voting groups

1780-8033 Identifying characteristics

The Folger Coffee Company **250 NLRB No. 001**

(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P&M Ees and plant clericals; appropriate voting group is one composed of laboratory technicians and unrepresented plant clericals)

1780-8067 Specific determination (by SIC category)

The Folger Coffee Company **250 NLRB No. 001**

(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P&M Ees and plant clericals; appropriate voting group is one composed of laboratory technicians and unrepresented plant clericals)

3300 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

3301 GENERALLY

New England Telephone and Telegraph Company8249 NLRB No. 165

(Bd found instant case distinguishable from cases cited by E in support of contention that RD's decision that less than systemwide unit wasappropriate was contrary to other recent Bd precedent involving E herein)

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**

(Bd's decision on appropriateness of single restaurant of nation-wide chain being appropriate unit, not arbitrary or capricious where Bd's findings and conclusions were supported by substantial evidence and in accordance with law)

3325 CRITERIA OF APPROPRIATENESS

Sears, Roebuck and Co. **253 NLRB No. 025**

3325—Cont.

(one store, rather than 2-store unit, appropriate, notwithstanding claim that units had been merged by parties' conduct, where there was no evidence that parties had mutually agreed to extinguish separateness of units, in view of contract provisions covering both stores leading to inference that, despite negotiation of single contract, parties did not contemplate creating single unit; moreover, each store operated as self-contained unit with no operational interchange between them and, in absence of specific language to the contrary, inference cannot be drawn that parties agreed to extinguish separate units)

Purnell's Pride, Inc. **252 NLRB No. 018**
(single plant unit rather than E-wide unit found appropriate where there exists: separate supervision, different job functions, lack of transfers and Ee contact and interchange, geographic separation of processing facility, distinct, and separate community of interest; other factors considered were lack of bargaining history and no other labor organization sought to represent E's Ees in broader unit)

3350 EMPLOYERWIDE UNITS

3350-2500 Separate firms as single employer

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*truckdrivers* of various types and styles of trucks used by two Es comprising single E included in single appropriate unit despite their lack of interchange; lack of interchange was no different than lack of interchange of job functions between Ees in any two job classifications)

N.L.R.B. v. Don Burgess Construction Corporation,
d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(Ees of E's two companies constituted single appropriate unit, in view of same skills, functions, working conditions and work situs; contention that Bd determination was erroneous as matter of law because Bd failed to consider whether new company's crew was accretion to existing crew, rejected, since issue was appropriateness of unit rather than accretion; contention that Bd must determine whether combined unit was only appropriate unit and, if not, any finding of accretion would be erroneous also rejected)

3350-7500 Specific unit determination (by SIC category)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(E-wide unit of community action agency's Ees appropriate where E has centralized control over determination of terms and conditions of employment of all its Ees)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(single overall unit of two plants rather than two separate units of individual plants held appropriate, where both plants are owned and operated by signle integrated E, both manufacture women garments, share common supervision and common control of labor relations policy)

Pickering & Company (Local 810, Teamsters) **248 NLRB No. 099**
(unit of all production maintenance and warehouse Ees at two facilities of E which manufactures audio equipment rather than production maintenance and warehouse Ees at one facility since presumption of appropriateness of single plant unit rebutted where geographical separation minimized by frequent E furnished transportation and in view of high degree of production integration and common management of administrative and production matters common benefits and seniority, notwithstanding lack of day-to-day interchange of Ees)

Land Equipment Inc. **248 NLRB No. 098**
(E-wide unit of all E's Ees except office clericals of company renting construction equipment with operators to building contractors and company providing operators, which were found single E herein, appropriate where both companies use same pool of Ees regardless of which is nominal E on two-week job assignments)

3375 LESS THAN EMPLOYERWIDE UNITS

3375-2500 City-wide

Associated Milk Producers, Inc. **251 NLRB No. 186**
(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment withlessor)

375-3700 Metropolitan area (including multistate metropolitan areas)

375-3750 Specific determination (by SIC category)

Automobile Club of Michigan, Detroit Autobile
Inter-Insurance Exchange; etc. v. N.L.R.B. **631 F.2d 82 (C.A. 6, 1980)**
(unit of salaried and commissioned sales and service representatives in all E's branch offices in *Detroit Metropolitan Area* found appropriate rather than all such Ees w/i State where such differences in pay scales, concentration of work force, interchangeability of Ees w/i Ees out of metropolitan area justify separateness of units; moreover certification will be upheld so long as unit is not inappropriate)

3375-5000 Less than statewide other than metropolitan area

New England Telephone and Telegraph Company **247 NLRB No. 161**
(where segment of E's statewide operation constitutes geographically cohesive unit w/i major administrative division of E's total operation, and manager of devision has authority to discharge Ees, unit sought by U appropriate for bargaining from standpoint of geography and administrative control)

3375-6200 Statewide

3375-6250 Specific determination (by SIC category)

New England Telephone and Telegraph
Company8249 NLRB No. 165
(requested unit of telephone utility's two business servicecenters located in New Hampshire held appropriate rather than systemwide unit ofE's 27 business service centers located in five New England states, where in addition to precedent and particular facts relied upon by RD, Bd relied on substantial degree of autonomy in day-to-day operations which local managers at the two centers possess; furthermore, subsequent to request for review herein, Bd has held that less than systemwide unit consisting of residential service center Ees at 12 locations in E's Western Division in Massachusetts was appropriate)

3375-8700 Less than all locations in two or more states

3375-8750 Specific determination (by SIC category)

Atlanta Baking Company, Inc. **JD-288-80**
(bakery route salesmen at two locations in two states employed by successor E not accretion to successor E's E-wide unit of route salesmen but appropriate separate unit in view of their having sufficient operational separation to retain their separate identity)

5000 MULTIEMPLOYER UNITS (SEE ALSO 530-5700)

5033 IDENTIFYING CHARACTERISTICS

5033-6000 Employers associated in bargaining

The North American Soccer League, etc., et al. v.
N.L.R.B. **613 F.2d 1379 (C.A. 5) (1980)**
(leaguewide unit of soccer clubs, appropriate notwithstanding substantial financial autonomy of individual clubs, where club-members of soccer league form, through the league, an integrated group with common labor problems and high degree of centralized control over labor relations)

5033-6020 Intent of employers

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**

6700 ADDITIONS OF GROUPS OF EMPLOYEES TO EXISTING UNITS

6701 GENERALLY

Westwood Import Company, Inc. **251 NLRB No. 162**
(*an accretion is by definition merely an addition of new Ees plus an already group of Ees so added to existing bargaining unit are regarded as part of that unit; in deciding whether new group of Ees is accretion to existing unit, Bd not only considers such factors as functional integration level of management control, similarity of working conditions, organizing history of Ee interchange, job skills, and physical separateness, but also gives special consideration to interests of unrepresented Ee in exercising their own right to self organization*)

Westwood Import Company, Inc. **251 NLRB No. 162**
(*Bd will not under guise of accretion, compel group of Ees, who may constitute separate appropriate unit, to be included in an overall unit w/o allowing those Ees opportunity of expressing their preference in secret ballot election or by some other election or by some other evidence that they wish to authorize U to represent them*)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where relevant considerations are not free from doubt as to whether or not Ees are accretion to existing unit, Bd and cts are in agreement that best way to resolve close question is through election process because accretion doctrine applied restrictively since it deprives Ees of opportunity to express their desires)

6725 SINGLE-LOCATION UNITS

6725-5000 Plant subdivision units

6725-5050 Departmental units

6725-5050-5000 Specific determination

6725-5050-5033 Employees held to be accretion

J. C. Penney Company **252 NLRB No. 047**

6725-5050-5033—Cont.

(retail store's catalog sales department held accretion to existing unit of floor sales department Ees, where catalog sales Ees primarily performed sales and related functions, handled merchandise they sold,, dealt directly with customers, used same mechanical aids, and had same or comparable work shifts and other conditions as floor sales Ees represented by U and covered by E-U contract)

6725-5050-5067 Employees held not to be accretion

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

6725-7500 Employee type or category units

6725-7505 Production employees unit

6725-7505-5000 **Specific determination**

6725-7505-5067 Employees held not to be accretion

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(bin repair-men employed by company which is affiliated with E and performs repair work contracted by E, held not accretion to E's sheet metal workers represented by U where there is insufficient community of interest between bin repair Ees and sheet metal workers)

6725-7567 Warehouse employees unit

6725-7567-5000 **Specific determination**

6725-7567-5067 Employees held not to be accretion

Westwood Import Company, Inc. **251 NLRB No. 162**
(after relocation E established warehouse function for first time and these newly hired warehouse Ees held not accretion to unit where warehouse Ees had different pay scales, performed different kind of work requiring different skills there was no interchange of Ee or contact between with unit Ees, notwithstanding warehouse Ees use same time clock, paid on same day, have same fringe benefit

6750 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

6750-3300 Employerwide units

The Arundel Corporation **252 NLRB No. 059**
(if new location may constitute a separate appropriate unit, Bd will not permit U to insist that its broad contractual recognition clause, purporting to cover *all* operations of E, whether or not in existence at time contract was executed, automatically blankets in Ees at new operation under guise of accretion; to do so would effectively disenfranchise Ees at new location thereby violating their appropriate unit rights under Sec. 9(b))

The Arundel Corporation **252 NLRB No. 059**
(since entire new unit could not be properly added as accretion to E's existing unit, there is no reason to suppose that portion of new unit can appropriately be severed and lumped into group with other of E's units with which it has no special affinity)

6750-3350 Specific determination

6750-3350-6700 **Employees held not to be accretion**

Plumbing Distributors, Inc. (Teamsters, Local Union No. 70) **248 NLRB No. 054**
(notwithstanding ultimate common control and operation of new facility and existing facilities, new facility constituted separate appropriate unit and not accretion to existing facilities, where there was no interchange between Ees, day-to-day supervision was independent from other facilities, and contracts do not explicitly grant recognition to U for new operations established w/i its territorial jurisdiction)

6750-6700 Less than employerwide units

The Arundel Corporation **252 NLRB No. 059**
(if new location may constitute a separate appropriate unit, Bd will not permit U to insist that its broad contractual recognition clause, purporting to cover *all* operations of E, whether or not in existence at time contract was executed, automatically blankets in Ees at new operation under guise of accretion; to do so would effectively disenfranchise Ees at new location thereby violating their appropriate unit rights under Sec. 9(b))

6750-6750 Specific determination

6750-6750-6700 **Employees held not to be accretion**

The Arundel Corporation **252 NLRB No. 059**
(Ees of subsidiary herein found single E with parent corporation, which resurrected subsidiary to operate quarry held, in retail store context, not to constitute accretion to parent corporation's existing unit in view of separation of locations, lack of substantial interchange and contact between Ees at those locations, different character of work performed at both locations, and considerable authority of president of parent corporation over personnel policies of subsidiary)

Atlanta Baking Company, Inc. **JD-280-80**
(bakery route salesmen at two locations in two states employed by successor E not accretion to successor E's E-wide unit of route salesmen but appropriate separate unit in view of their having sufficient operational separation to retain their separate identity)

Venture Stores, Inc. **JD-81-80**
(E which built distribution center to service both its previously owned and its newly purchased stores held not successor at distribution center to E from which it purchased stores, since purchaser neither employed majority of seller's Ees there on critical date nor was it perfectly clear that it would do so in future; moreover distribution center did not involve same location, plant, equipment, methods, service or customers as seller's distribution facility and its Ees were not accretion to unit of Ees employed at stores which were purchased)

8300 SEVERANCE OF GROUPS OF EMPLOYEES FROM EXISTING UNITS

460 DETERMINATION OF COMPOSITION OF UNIT

2500 DETERMINATIONS INCLUDING OR EXCLUDING EMPLOYEE JOB CATEGORIES FROM UNITS (SEE APPROPRIATE HEADING UNDER TYPE OF UNIT INVOLVED, UNDER 440-0000)

5000 EFFECT OF EMPLOYMENT CATEGORY, STATUS, OR TENURE UPON PLACEMENT IN A UNIT

5033 CATEGORY OR TYPE OF EMPLOYEE

5033-2500 Employees allied with management

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

5033-2550 Nature of relationship

5033-2550-1200 Lessor

Alumbaugh Coal Corporation **247 NLRB No. 112**
(Ee who was also lessor of land being mined for coal to coalmining E held to have interest so aligned with management as to extinguish his community of interest with other Ees)

5033-2550-2500 Member of religious Order

Mercy Hospital of Buffalo **250 NLRB No. 136**
(where E's bylaws require that majority of board of trustees be member of religious order which ran hospital, and administrator also member of Order, member of that order found ineligible to vote as she is considered part of E and is fundamentally different from Ees in bargaining unit)

5033-2550-3300 Child

Pandick Press Midwest, Inc. **251 NLRB No. 058**
(daughter of plant manager who also has title of *president* not eligible to vote in election and excluded from unit where she lives at home with her father, has more flexible shift schedule than other Ees and her easy access to management gives her status and area of interest distinct from other Ees)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(contention that sons, herein excluded from unit, were not employed by their father but by partnership entity owned by father and partner, and that prior Bd decision required GC to prove sons' *special status* for their exclusion, rejected; cited decisions do not relate to issue herein but primarily to Ees of corporations, Congress has definitively excluded child of owner from status of *Ee*, and father herein, sole operator of partnership because of partner's illness, was directly responsible for day-to-day operation of partnership's business)

5033-2550-5000 Husband or wife

Riverside Community Memorial Hospital, Inc. **250 NLRB No. 166**
(registered nurse regularly scheduled on monthly schedule on *on-call* basis, eligible since she met test for Ee-wife of nonowning manager by not enjoying special status where her strictly *on-call* work schedule was not special in view of the number of hours she worked on prearranged and regular basis)

5033-5000 Confidential employees

5033-5001 Generally

Stroock & Stroock & Lavan **253 NLRB No. 052**
(those who act in confidential capacity involving their E's labor relations, not those of another E)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

5033-5001-5000 Policy as to placement

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**
(Bd held law firm's clerical and support staff not *confidential* workers under *Bell Aerospace* and the *Taft-Hartley* legislative history, adhering to its traditional restrictive definition of confidential workers as individuals acting in confidential capacity to those Ees formulating, determining and effectuating management's labor relations policies for their own E)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(office clerical who served as secretary to credit manager held not confidential Ee since routine secretarial assistance to official who formulates and effectuates labor relations policies is not sufficient to warrant exclusion from unit as confidential Ee)

5033-5050 Identifying characteristics

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**
(secretaries to administrative heads which formulated labor relations policy held confidential Ees and excluded from unit)

5033-5050-5000 Access to information regarding

5033-5050-5020 Labor relations

ITT Grinnell **253 NLRB No. 077**
(secretary to assistant plant manager found confidential Ee and excluded from office clerical unit; manager has significant responsibility for formulation and effectuation of labor relations policy and she has sole responsibility for his filing and typing)

ITT Grinnell **253 NLRB No. 077**
(secretary to engineering supervisor whose job description contains no duties concerning personnel matters or formulation of labor relations policy and possibility of such duties only speculative found not confidential secretary and included in unit)

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**
(Bd held law firm's clerical and support staff not *confidential* workers under *Bell Aerospace* and the *Taft-Hartley* legislative history, adhering to its traditional restrictive definition of confidential workers as individuals acting in confidential capacity to those Ees formulating, determining and effectuating management's labor relations policies for their own E)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

Reymond Baking co. **249 NLRB No. 156**
(challenge to ballot of *receptionist/typist/floater* sustained since such Ee acts in confidential capacity to person involved in formulating, determining and effectuating E's labor relations and is therefore confidential Ee)

Union College **247 NLRB No. 069**
(secretaries to divisional deans held confidential Ees where they have access to grievance files and E's notes relating to grievances and help with work in connection with labor relations functions of divisional deans)

5033-5050-5060 Personnel records

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(Ee found not to be confidential Ee and included in unit where she was hired as secretary, did general typing and only small amount of personnel work, including voter eligibility list)

5033-7500 Managerial employees

5033-7501 Generally

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

5033-7550 Identifying characteristics

5033-7550-2000 Formulation or effectuation of employer's policies

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

5033-7550-2000—Cont.

(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(Head Start program teachers and parent coordinators included in community action agency's E-wide unit absent evidence that they are supervisory or managerial, i.e., that they are on parent advisory council or that council controls program's personnel policies)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility, they do not attend management meetings and are not involved in formulation of goals and policies)

Dooley Equipment Corporation **JD-215-80**
(Ee in training period for managerial position with 6 months remaining in period working under close supervision of supervisor with little discretion to determine departmental policy not managerial Ee)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; further, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

5033-7550-4000 Attendance at management meetings

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility, they do not attend management meetings and are not involved in formulation of goals and policies)

5067 STATUS OR TENURE OF EMPLOYEE

5067-0100 Generally

5067-0140 Illegal aliens

Duke City Lumber Company, Inc. (UBC Texas Council of Industrial Workers, UB of C & J of A., AFL-CIO) **251 NLRB No. 012**
(status as illegal alien not grounds for exclusion from bargaining unit)

5067-1400 Apprentices and trainees

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

5067-2800 Employees anticipating change in status or tenure

5067-2850 Criteria relevant to placement

Wright Plastic Products, Inc. **247 NLRB No. 101**
(Ee who had given E notice that he would be quitting to enter Navy in 1 month considered regular full-time Ee notwithstanding he has tendered his resignation)

5067-4200 Regular part-time employees

5067-4201 Generally

Century Moving & Storage, Inc. **251 NLRB No. 083**
(local driver working regularly for E while he was on vacation from his railroad job; not casual Ee and included in unit)

5067-4250 Criteria relevant to placement

Dooley Equipment Corporation **JD-215-80**
(skilled part-time welder included in unit of mechanics and parts Ees notwithstanding has full-time employment elsewhere where he came to work when requested, used E's shop and equipment and occasionally worked with E's mechanics under same supervision)

5067-4500 Students

Century Moving & Storage, Inc. **251 NLRB No. 083**
(full time college student who worked only 25 hours during first month of 3-month period prior to election, *not* included in unit)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(college students who perform full-time unit work during summer months as well as part-time unit work on regular basis during remainder of year, included in unit)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(student who works only during summer months excluded from unit)

5067-4501 Generally

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-4550 Criteria relevant to placement

Century Moving & Storage, Inc. **251 NLRB No. 083**

5067-4900 Employees performing dual functions

5067-4950 Criteria relevant to placement

Wilson Engraving Company, Inc. **252 NLRB No. 048**
(inclusion of dual-function Ees in unit of city-drivers employed by manufacturer of photographic plates and color separations, appropriate where they performed similar delivery and pickups as included drivers during substantial portions of their working time; furthermore, these Ees shared community of interest in unit's wages, hours, and working conditions)

Wilson Engraving Company, Inc. **252 NLRB No. 048**
(dual-function Ees excluded from unit of city-drivers employed by manufacturer of photographic plates and color separations, where driving duties occupy less than twenty-five percent of their working time, thus lacking sufficient community of interest to warrant inclusion)

5067-7000 Temporary employees

5067-7001 Generally

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-7050 Criteria relevant to placement

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(CETA Ees employed by nonprofit community action agency included in E-wide unit, notwithstanding limited durationof their jobs, in view of their community of interest with other unit Ees and E's attempts to place them elsewhere after their CETA jobs have run out)

Rosemount Center **248 NLRB No. 163**
(CETA Ees employed at E's child day care facility held not temporary Ees; fact that CETA grant might expire and not be renewed does not necessarily make Ees involved under such grant temporary; CETA Ees, like all of E's Ees, are dependent upon exigencies of revenues from Federal, State, and municipal sources which are generally reviewed annually; and even if grant is not refunded, some CETA workers could reasonably expect continued employment because E's contract with prime sponsor required E to make good faith effort to place at least half of CETA Ees in permanent positions)

5067-7700 Intermittent, occasional, or casual employees

5067-7701 Generally

Century Moving & Storage, Inc. **251 NLRB No. 083**
(local driver working regularly for E while he was on vacation from his railroad job; not casual Ee and included in unit)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-7750 Criteria relevant to placement

Dooley Equipment Corporation **JD-215-80**
(skilled part-time welder not included in unit where he only worked 15 hours in quarter preceeding election)

5067-8200 On call employees

Riverside Community Memorial Hospital, Inc. **250 NLRB No. 166**
(registered nurse regularly scheduled on monthly schedule on *on-call* basis who worked approximately 6 hours per week in 14 weeks preceding eligibility date, eligible since she met both test for *on-call* Ees by working average of 4 hours per week in pre-eligibility-period quarter and test for *on-call* registered nurses by working 30 hours in 13-week period)

5067-9900 Other employees

Avon Products, Inc. **250 NLRB No. 141**
(*reserve employees* who have worked 4 or more hours per week in 9 out of 13 weeks preceding issuance of RD decision, eligible)

7500 EMPLOYEE CATEGORIES EXCLUDED FROM UNIT BY STATUTORY DEFINITION (FOR DEFINITIONS, SEE 177-0000)

470 HEALTH CARE INSTITUTION UNITS

0100 GENERALLY (FOR DEFINITIONS OF HEALTH CARE INSTITUTIONS SEE 177-9700-0000-0000)

0150 LEGISLATIVE HISTORY

Newton-Wellesley Hospital **250 NLRB NO. 086**

(in holding separate unit of registered nurses at hospital appropriate, Bd noted legislative history of health care amendments does not require Bd to forego consideration of community of interests among Ees w/i health care industry notwithstanding requirement that Bd give due consideration to avoiding unwarranted fragmation of bargaining units in this industry)

Mary Thompson Hospital, Inc. **621 F.2d 858 (C.A. 7, 1980)**

(Bd should heed congressional admonition to avoid fragmentation of units in health care facilities rather than applying traditional community of interest standards)

1700 PROFESSIONAL UNITS

1733 REGISTERED NURSES UNIT

1733-0100 Generally

Newton-Wellesley Hospital **250 NLRB NO. 086**

(in holding separate unit of registered nurses at hospital appropriate, Bd noted legislative history of health care amendments does not require Bd to forego consideration of community of interests among Ees w/i health care industry notwithstanding requirement that Bd give due consideration to avoiding unwarranted fragmation of bargaining units in this industry)

1733-4000 Specific determination

Brookwood Hospital Management Corporation d/b/a Brookwood Hospital **252 NLRB No. 107**

(separate RN unit, rather than overall professional unit at acute care nursing facility, appropriate as team approach does not require inclusion of all professional Ees in single unit and there are significant differences in training, supervision and responsibility between registered nurses and other professionals)

Newton-Wellesley Hospital **250 NLRB NO. 086**

(separate unit of registered nurses apart from other professional personnel at hospital, appropriate, in view of community of interest where vast majority of nurses are administratively separated in nursing division as required by state law, subject to common supervision, work in close and continuous contact with one another with limited contact with other professionals, and in view of similar education, training, and experience, and fact most possess same license)

1733-6000 Placement of registered nurses in other unit

Valley View Hospital **252 NLRB No. 160**

(GC's mtn for summary judgment denied where RD had found unit including RNs appropriate in view of stipulation of parties; however, there was no testimony at R hearing which would indicate RNs were technical Ees, or performed duties different from those implied in their job classification, and stipulation alone cannot override mandate of 9(b) requiring professional Ees to vote on inclusion in unit with non-professional Ees)

1733-8000 Placement of other employees in registered nurses unit

Brookwood Hospital Management Corporation d/b/a Brookwood Hospital **252 NLRB No. 107**

(associate psychologist excluded from RN unit at acute care nursing facility where he is responsible to director of psychiatric nursing, in view of his part time status and that he arranges own schedule on orders from various physicians)

Albert Einstein Medical Center **248 NLRB No. 009**

(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

1767 UNITS OF OTHER PROFESSIONALS

1767-2000 Identifying characteristics

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(position of medical laboratory technologist falls w/i definition of *professional* Ee as they have completed college *degree* program and are registered with professional association and use independent judgment and discretion in performance of their duties when analyzing and interpreting medical tests and, therefore, are excluded from technical unit w/o separate election)

1767-6000 Placement of (subject) employees in other unit

Brookwood Hospital Management Corporation d/b/a Brookwood Hospital **252 NLRB No. 107**

(separate RN unit, rather than overall professional unit at acute care nursing facility, appropriate as team approach does not require inclusion of all professional Ees in single unit and there are significant differences in training, supervision and responsibility between registered nurses and other professionals)

1767-8000 Placement of other employees in (subject) unit

Mt. Graham Community Hospital **250 NLRB No. 060**

(Manpower Ee under CETA program at hospital included in unit of regular part-time nurses aides, notwithstanding limited duration of her job, where she performed same duties as hospital's regular nurses aides, under same supervision, and her wages and fringe benefits although slightly lower than those received by unit Ees were comparable to wage rate and fringe benefits of unit Ees when differing levels of experience were taken into account)

3300 TECHNICAL EMPLOYEES UNIT

3380 PLACEMENT OF OTHER EMPLOYEES IN TECHNICAL UNIT

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(position of ward manager included in unit because of Ee's contact with other Ees represented by U, creation of position post-dated bargaining agreement, and there is no other unit in which Ee could be included)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(secretary to president of E who is not involved with formulation of labor relations policies included in unit where her duties are similar to those performed by represented clerks and record not clear that position existed prior to bargaining agreement)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(financial administrator of E included in unit where newly created position and she performs duties not unlike those clerks already represented by U)

Butler Hospital **250 NLRB No. 165**

(mental health workers found technical Ees and included in technical unit at nonprofit hospital providing psychiatric and mental health services where they are mostly college graduates, receive intensive, specialized on-the-job training, consult daily with professional staff, are considered part of nursing staff, and regularly exercise independent judgment)

Albert Einstein Medical Center **248 NLRB No, 009**

(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

5000 SERVICE AND MAINTENANCE EMPLOYEES UNIT

5060 PLACEMENT OF SERVICE AND MAINTENANCE EMPLOYEES IN OTHER UNIT

5060—Cont.

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(service and maintenance Ees at hospital held not properly encompassed in single unit with plant operations department Ees where service Ees do not possess level or type of skill required of operations Ees, they are separately supervised, work different hours and shifts, some have direct patient contact, they wear different colored uniforms, share no responsibilities with operations Ees, and there was practically no interchange)

5080 PLACEMENT OF OTHER EMPLOYEES IN SERVICE AND AND MAINTENANCE UNIT

Taylor Hospital **249 NLRB No. 031**
(cart technicians, mail messenger and transporters of patients at hospital, classifications which were created after original unit determination, included in unit of hospital Ees since they share community of interest with hospital Ees)

5800 MAINTENANCE EMPLOYEES UNIT

5840 SPECIFIC DETERMINATION

Mary Thompson Hospital, Inc. **621 F.2d 858 (C.A. 7, 1980)**
(Ct refused to enforce Bd's order that E bargain with separate unit of licensed sanitary engineers apart from other engineering and maintenance department Ees at hospital since in finding unit appropriate Bd failed to heed congressional admonition to avoid fragmentation of units at health care facilities but rather applied traditional community of interests standard)

6700 OFFICE CLERICAL UNITS

7500 CRAFT UNITS

8300 OTHER UNITS DEFINED BY TYPE OR CATEGORY OR COMBINATIONS THEREOF

8301 GENERALLY

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(in finding plant operations department Ees at hospital entitled to separate representation from service and maintenance Ees, Bd held ct decisions relied on by E for asserting single unit appropriate did not announce per se rule proscribing certification of unit herein but, rather, required Bd to balance Ees' interest in adequate representation against special consideration of avoiding disruption in health care industry)

Monongahela Valley Hospital, Inc. **248 NLRB No. 013**
(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

8360 PLACEMENT OF (SUBJECT) EMPLOYEES IN OTHER UNIT

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(plant operations department Ees at hospital held entitled to separate representation from service and maintenance Ees in view of the many differences in job classifications between the 2 Ee groups, and operations Ees' wide variety of skills, separate supervision, and distinct uniforms and identification badges)

8380 PLACEMENT OF OTHER EMPLOYEES IN (SUBJECT) UNIT

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(chauffeur-groundskeeper-laborers at hospital included in unit of plant operations department Ees, where responsibilities of all plant operations Ees, in continuing maintenance and improvement of facility, outweigh differences between chauffeur-groundskeeper-laborers and remainder of plant operations Ees and mandates their inclusion in unit)

8800 RESIDUAL EMPLOYEE UNITS

9000 ADDITIONS OF GROUPS OF EMPLOYEES TO EXISTING UNITS

9025 SPECIFIC DETERMINATION

9025-6700 Employees held not to be acccretion

United Hospitals, Incorporated and The Children's Hospital, Inc. **249 NLRB No. 063**
(where 3 E members of 21 E multi-E association planned merger and admitting clerks of 2 of these 3 E's were unrepresented by U, U's request that unrepresented Ees be treated as accretion to unit denied because out of 21 Ee groups only 2 were represented by U and Bd will not add unrepresented Ees to multi-E unit on piece meal basis, notwithstanding all admitting clerks would be on 1 payroll, work in single admitting department, perform similar job functions under common supervision)

9100 SEVERANCE OF GROUPS OF EMPLOYEES FROM EXISTING UNITS

480 POSTAL SERVICE UNITS

0100 GENERALLY

3300 SCOPE OF UNITS (SEE 480-6700 FOR PLACEMENT OF PARTICULAR CATEGORIES OF EMPLOYEES IN THESE UNITS)

6700 COMPOSITION OF UNITS

500 UNFAIR LABOR PRACTICES

501 GENERALLY

1400 NATURE AND SCOPE OF PROSCRIPTIONS

1467 ONLY ACTIVITIES SPECIFICALLY PROHIBITED ARE UNFAIR LABOR PRACTICES

1467-6700 Picketing for proscribed purposes only prohibited

Anco Insulations, Inc. **247 NLRB No. 081**

(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

2800 Section 8(c)

2837 STATEMENTS NOT CONTAINING THREATS OR PROMISES MAY BE COERCIVE

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(Bd's statement made in Fedelity Telephone that *A respondent is responsible only for the remarks it makes to Ees and not for the impressions that Ees may derive from remarks* was not intended to license interference with Ees' rights by use of subtlety, innuendo, and inference, prohibiting only blunt and categorical acts of restraint and coercion)

2875 CONDUCT PROTECTED BY SECTION 8(c)

2875-0100 Generally

Marine World USA **251 NLRB No. 161**

(in remanding proceedings to Bd for consideration of whether E's announcements to Ees concerning wage increase constituted noncoercive speech protected by 8(c), ct stated that speech which might otherwise be found coercive w/i meaning of 8(a)(1) cannot in view of 8(c) be basis of a violation unless coercion found amounts to a *threat of reprisal or force or promise of benefits*)

2875-4500 Expression of opinion

Billings Chrysler-Plymount, Inc. **251 NLRB No. 089**

(E's statement to Ee that it would be wise to wait until U was certified before he joined not violative as protected statement of opinion)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**

(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

Han-Dee Pak, Inc. **249 NLRB No. 107**

(supervisor's comments to Ees concerning past experience of being in U and how U didn't help him, that when U was voted in Ees would have to have negotiated contract, not unlawful as mere expressions of opinion and protected by Sec. 8(c) right of free speech)

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**

(sentence in E's letter to Ees which makes it clear that in E's view signing cards is not in the Ees' best interest held campaign propaganda protected by 8(c))

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Signode Corporation **JD-161-80**

Lika Corporation **JD-(SF)-69-80**

(legitimate economic prediction that there could possibly be strike if U came in not violative)

2875-5600 Opposition to union or collective bargaining, expression of

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**

(E's response to Ees' questions that, if Ees voted in U, E must negotiate in good faith but did not have to sign contract if unable to agree to its terms, not coercive and not unlawful or statement that electing U would be futile since E would not negotiate contract, as alleged, but rather was correct statement of E's legal obligation)

2875-6300 Economic prediction of consequences of unionization

Chester Valley, Inc. **251 NLRB No. 190**

(telling Ee that benefits which Ee wanted U to obtain for Ees were too expensive for E's gasoline station and E would turn it into self-service station if he had to, not unlawful, since remarks dealt with an economical means of accomodating two objectively demonstrable circumstances, namely, specific proposed U demands and gasoline station's financial condition)

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 150**

(predictions made with reasonable basis in fact and w/o retaliatory motive, lawful)

Patsy Bee, Inc. **249 NLRB No. 125**

(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**

(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2875-7000 Prediction of consequences of organization

Chester Valley, Inc. **251 NLRB No. 190**

(E's claim made to Ees that unionization will lead to adverse actions resulting from requirement for physical examinations of Ees, elimination of part-time Ees, refusal to accomodate work hours to Ees' personal schedules, and change to self-service gasoline sales held to constitute unlawful threats rather than lawful predictions)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(E's statements that unionization would subject Ees to *grave risk* and that E would respond to selection of U by action that would jeopardize Ees' livelihood, unlawful, even though E, from time to time, asserted that it would bargain in good faith, that it intended no reprisals, and attempted to cite consequences of unionization as results that *could* happen)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

C-F Air Freight, Inc. **247 NLRB No. 060**

(E's statements threatening to close plant, unlawful, where statements conveyed impression that decision to close plant would be made after Ees selected U as representative, E's stated economic reasons as basis of lawful prediction relative to plant closing remarks were spurious, at time statements were made Ees had not even approached U and E was not confronted with contract demands, and continuation of E's facility for over 7 years of financial losses does not support claim that E's statements were merely predictions)

C-F Air Freight, Inc. **247 NLRB No. 060**

(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

2875-7050 In answer to employee's question

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**
(supervisor's statement to Ee that bargaining could lead to strike and possible shutdown of flight kitchen held protected by 8(c))

2875-7700 Threats of reprisal

Thermo King Corporation **247 NLRB No. 048**
(baseball poster, displayed by E during election campaign, bearing slogan *You only get one strike and you are out. And that's the way it is with the Union* held not to constitute threat of discharge, since factual representations that when Ees engage in strike they are not receiving pay, and they are walking or out on picket line, are permitted as expressions of free speech)

2887 CONDUCT NOT PROTECTED BY 8(c)

2887-0800 Announcements of benefits or concessions

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

2887-6600 Predictions as to effect of unionization

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(violation where E made reference to strike in the event of U coming with consequence of loss of pay to Ees)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E's statement to Ee, who had previously been threatened with plant closing if U came in, that neighboring plant had closed because of U's demands, and that *maybe U wants more for people and get bankrupt*, unlawful)

Providence Rest Home, Inc. **JD-(NY)-51-80**
(prediction that if U won some Ees could or would be let go, violative, since based only on subjective considerations)

4200 EFFECTIVENESS OF UNFAIR LABOR PRACTICE NEED NOT BE SHOWN

4233 ACT 'DOES NOT REQUIRE PROOF THAT 'EMPLOYER'S' CONDUCT HAD ITS DESIRED EFFECT'

Service Garage, Inc. **247 NLRB No. 115**
(lawfulness of E's conduct does not turn on whether particular Ee feels that he had been interfered with, restrained or coerced, but on whether E was motivated by U animus)

5600 EMPLOYER'S CONTROL OF BUSINESS PRESERVED

5601 GENERALLY

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(while Act does not prevent Es from founding and operating businesses which seek to be *personal-oriented*, or which attempt to apply progressive social principles to their operations, Ees have right to collectively resist application of such principles in order to better their conditions of employment through U representation, and under Act E, despite sincere belief in *human scale* operational philosophy, has duty of forebearance when Ees seek to achieve their ends)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

5601-5000 Unrestricted by Act if no unfair labor practice

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights, discrimination not in issue)

5614 DISCHARGE POWER FOR NORMAL REASONS UNIMPAIRED

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**

5628 DISCONTINUANCE OF OPERATIONS FOR ECONOMIC REASONS PROPER

St. Regis Paper Company **247 NLRB No. 105**
(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

5656 DISCIPLINE: EMPLOYER MAY TAKE ACTION TO MAINTAIN

Clark Equipment Company **250 NLRB No. 178**
(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time*, w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

United States Postal Service **JD-(SF)-273-79**
(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

7000 CIRCUMSTANCES INDICATING VIOLATION

7020 CIRCUMSTANCES SURROUNDING ACTS IN QUESTION MUST BE CONSIDERED

Austell Box Board Corporation **249 NLRB No. 044**
(not only was it proper for Bd, for purposes of making independent evaluation, to look at all facts and circumstances surrounding Ee's discharge to decide whether it was connected with Ee's threat to go to Bd and to examine allegedly legitimate reasons for discharge to determine whether Ee would have been discharged if he had not threatened to go to Bd, but it was Bd's obligation to draw its own inferences from all the evidence to determine presence or absence of discriminatory motivation)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

7060 ANTIUNION ATTITUDE AND POLICIES OF EMPLOYER

7060-3300 Indicia of antiunion attitude

Swift and Company **250 NLRB No. 152**
(supervisor's threat to discharge another Ee along with shifting reasons for discharge and disparate enforcement of rules indicating pretextual reasons for discharge evidence U animus)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's statement that he would not hold Ee's U activities against him held not to indicate absence of U animus, where statement occurred during meeting with Ee after his unlawful suspension; by referring to Ee's earlier U activity E strenghtened Ee's belief that he and other Ees had been treated disparately for engaging in protected conduct, and E never apologized for his earlier actions nor sought to rectify earlier unlawful conduct; consequently, E's statements were entirely self-serving and merely reinforced Ee's belief that he was being singled out for disparate treatment)

7060-8300 Proof of, strengthens proof of unfair labor practice

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

8400 AFFIRMATIVE DEFENSES

8407 ECONOMIC NECESSITY, PRESSURE OR HARDSHIP

St. Regis Paper Company **247 NLRB No. 105**
(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

8414 'CLEAN HANDS' DOCTRINE

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that charging party, E's bargaining representative, was equitably barred in instant 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since *clean hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(inequitable to fault only one of two parties since both contributed to ambiguity of situation, where E's conduct was inconsistent with nonmembership in multi-E association and U continued to accept uncertainty as to E's membership)

8418 INTERVENING COURT STAY

Bay Medical Center, Inc. **252 NLRB No. 159**
(Respondent's duty to bargain not stayed by order of Circuit Ct of Appeals where stay was limited to appellate proceedings and had no effect on duty to bargain)

8427 MOTIVE AND INTENT

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(*true purpose* or *real motive* is test for determining whether conduct falls w/i statutory ban; proof of subjective motive can, in limited situations, be made out from conduct itself, but where impact is slight or indirect, or where it may be explained by reference to other lawful considerations, it is prima facie lawful, and an affirmative showing of improper motivation must be made)

8427-0100 Generally

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(in *Mt. Healthy* case, 429 U.S. 274 (1977), SCt established two-part test to be applied in dual motivation context; Ee must establish that protected conduct was *substantial or motivating* factor; once this is accomplished, burden shifts to E to demonstrate that it would have reached same decision absent protected conduct)

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

Landmark Beef Processors, Inc. **248 NLRB No. 041**
(absence of U animus no less than its presence is relevant factor in assessing motive for discharge)

Permanent Label Corporation **248 NLRB No. 021**
(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

CTS Keene, Inc. **247 NLRB No. 141**
(E's intent not material to finding that its interrogation of Ee violated 8(a)(1))

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

8427-2500 Absence of unlawful motive may not be defense

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(motive or whether coercion succeeded or failed immaterial to prove violation of Sec. 8(a)(1); test is whether E has engaged in conduct which reasonably tends to interfere with free exercise of Ee rights under Act)

8427-7500 Lack of intent to violate Act may not be defense

Jefferson Electric Co., Inc. **251 NLRB No. 129**
(E's subsequent recognition of U, occuring after its initial, unlawful refusal to bargain, insufficient to withstand *Motion for Summary Judgment*, since Ees' statutory rights had been violated)

8448 ADVICE OF COUNSEL NO DEFENSE

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

Eastern Maine Medical Center **253 NLRB No. 024**
(fact that E withheld wage increases from unit Ees during bargaining negotiations with U on advice of counsel held insignificant in determining that E's conduct was unlawful)

Peat Manufacturing Company **251 NLRB No. 153**
(no violation where in response to subpoenaed witness's question as to what could be done to her if she did not appear at hearing, E's lawyer said nothing much unless Bd sought enforcement, since attorney under no obligation to affirmatively advise witness of her obligation to honor subpoena in absence of question regarding whether to appear or not)

8461 CONTRACTUAL RIGHTS OR OBLIGATIONS

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**
(in field of labor relations, if parties have agreed upon terms of bargaining agreement, they are bound by terms agreed upon notwithstanding failure to sign it)

8471 DE MINIMUS

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(E's 3-week suspension of salary review w/o consulting with U, unlawful and though inconsequential, it was distinguishable from violations where Bd applied *de minimis* doctrine)

8475 ISOLATED CHARACTER OF VIOLATION NO DEFENSE

8475-3300 Where part of general unfair labor practice background

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing at gate reserved for neutrals at jobsite, unlawful and warranted remedial order, notwithstanding involved picketing by only two pickets for one day, in view of Respondent's unlawful picketing at another jobsite at same time in connection with dispute with same E)

8481 UNION MISCONDUCT, AND FEAR OR THREATS THEREOF

Land Equipment Inc. **248 NLRB No. 098**
(E's contention that it was coerced into signing 8(f) agreement by U's illegal conduct and should therefore not be required to honor said contract, rejected where U's conduct could not be considered because it was outside 10(b) period)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(evidence of prior *use* or *misuse* of information requested of E by U is quite relevant in determining whether E was bargaining in good faith)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(prior harassment of Ees and their legitimate fear of harassment justified E's subsequent refusal to provide U payroll information on replacement workers or names and addresses of unit Ees)

506 EMPLOYEE RIGHTS PROTECTED BY SECTION 7

0100 GENERALLY

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(defense by E, operating legal services as contractor of federal agency, on ground that statute establishing agency forbade Ee conduct for which they were allegedly unlawfully disciplined, rejected; enabling statute is construed to refer to NLRA, to have recognized its provisions, and to have incorporated various interpretations and applications of Sec 7)

0128 RIGHT TO FORM, JOIN, OR ASSIST LABOR ORGANIZATIONS

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**

(payroll supervisor's response to U steward's request for his paycheck, to effect that ----*you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

0142 RIGHT TO BARGAIN COLLECTIVELY THROUGH REPRESENTATIVE OF OWN CHOOSING

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**

(while Act does not prevent Es from founding and operating businesses which seek to be *personal-oriented*, or which attempt to apply progressive social principles to their operations, Ees have right to collectively resist application of such principles in order to better their conditions of employment through U representation, and under Act E, despite sincere belief in *human scale* operational philosophy, has duty of forebearance when Ees seek to achieve their ends)

0170 RIGHT TO ENGAGE IN OTHER CONCERTED ACTIIVITIES FOR OTHER MUTUAL AID OR PROTECTION

Red Ball Motor Freight, Inc. **253 NLRB No. 111**

(Ee's complaint to management regarding their order of recalling Ees and requiring that Ees use their vacation time during period of forced layoff held protected concerted activity; Ee's complaint constituted effort to gain benefit not only for herself but for her coworker and other senior Ees as well)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**

(Ee's comment, made in presence of coworkers, that another Ee should not start work until time set by E held concerted activity, since remark was attempt to induce fellow Ees not to perform work for which they would not be paid)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**

(fact that Ee was not specifically chosen as spokesperson by Ees to speak for them in discussions with supervision was irrelevant to issue of concerted activity, since it was clear that Ee spoke on Ees' behalf as well as her own)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB NO. 047**

(Ees are not required to give E notice or obtain its permission to engage in protected activity)

Anco Insulations, Inc. **247 NLRB No. 081**

(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**

(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(Section 7 protects concerted activity by Ees; and one Ee's request for presence of another unit Ee at an interview is *concerted activity*)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

0184 RIGHT TO REFRAIN FROM EXERCISE OF SECTION 7 RIGHTS

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**

(informing Ee she was to be put on probation for failing *to voice her concerns in constructive manner* where she failed to attend meeting with management on her own time to discuss working conditions, and had allegedly made statements regarding incompetency of management to third parties, unlawful, since refraining from exercising her Section 7 right to attend meeting, protected; further, E lacked sufficient evidence of Ee's criticism to third parties on which to base honest belief of misconduct required for punitive action; fact probation never put into effect did not mnullify unlawful threat to discipline)

2000 NATURE OF ACTIVITIES PROTECTED

2001 GENERALLY

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(so long as concerted activity is not unlawful, in breach of contract or disloyal, Ees engaged in concerted activity do not lose protection of Act simply because their activity contravenes E's rule or policies; application of Sec. 7 of Act does not depend on manner in which Ees choose to press despute, but rather on matter they are protesting)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(fact that Ees who participate in concerted activities are not members of same U, or Ees of same E, does not alter concerted nature of activity or deprive it of protection accorded such activity by Act)

2001-5000 Concerted activity defined

Red Ball Motor Freight, Inc. **253 NLRB No. 111**

(Ee's complaint to management regarding their order of recalling Ees and requiring that Ees use their vacation time during period of forced layoff held protected concerted activity; Ee's complaint constituted effort to gain benefit not only for herself but for her coworker and other senior Ees as well)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**

(Ee's comment, made in presence of coworkers, that another Ee should not start work until time set by E held concerted activity, since remark was attempt to induce fellow Ees not to perform work for which they would not be paid)

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**

(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company **251 NLRB No. 147**

(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

E. A. Nord Company **250 NLRB No. 068**

(discharge of Ee because of his expressed intent to file contractual grievance unlawful, conduct was concerted since it could establish precedent for other Ees)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**

(derogatory comments of two Ees concerning management and expression of differences regarding policies and programs, not concerted, notwithstanding Ees together iterated various attitudes, since no effort made during more than 3 months to cultivate dissatisfaction into confrontational form of expression where Ees did not invite other Ees into coalition, formulated no agenda, filed no grievances, nor made any demands)

Sentry Investigation Corp. **249 NLRB No. 130**

2001-5000—Cont.

(Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics)

Colonial Stores Incorporated **248 NLRB No. 142**

(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights.* Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**

(Ee demanding improvement of wages, pensions, and health benefits held concerted activity rather than effort to obtain objective only for self, since Ee's demands would inure to benefit of all Ees; moreover, Ee had spoken to several of his fellow Ees and apprised them of his intentions and they had not expressed disinterest in his taking action)

Ontario Knife Company **247 NLRB No. 168**

(fact that Ee, who together with another Ee had grievance discussion with supervisor, walked out alone held not to prevent walkout from being protected concerted activity, where grievance in question was group concern of Ees, and Ee and other Ee were engaged in group action up to the point when Ee walked out alone following supervisor's *off-color* remarks made during grievance discussion)

Fall River Savings Bank **247 NLRB No. 088**

(questioning order of seniority in which Ees are called for weekend work found concerted, since seniority is a matter of common concern)

Meat Cutters, Local 391 **JD-(SF)-304-80**

(filing of grievance with E and subsequent calls to officials of E to check on veracity of supervisor's discharge threats held protected concerted activity)

Meat Cutters, Local 391 **JD-(SF)-304-80**

(grievance that dealt at least in part with areas of supervisor's performance which had impact on both Ees' job interests and their ability to perform tasks for which they were hired was grievance over working conditions, rather than attack on supervisor; as such, Ees conduct was protected)

Scott Paper Company **JD-623-80**

(Ee's alleged concern about safety conditions held not to be concerted where there was no evidence that, at any time, any of his co-Ees showed *concern* as to safety of operation, and he did not consult any other Ee before his refusal to perform assigned task)

Shuttle Motor Corporation **JD-327-80**

(Ee's inquiry of state agency regarding legality of *back-stubbing* i.e., E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not concerted, where *back-stubbing* was not matter of common C among Ees; further, Ee called agency before any adverse action taken against him and subsequent *back-stubbing against him rectified*)

Public Service Company of New Mexico **JD-(SF)-157-80**

B & F Turgeon, Inc. **JD-274-80**

(if Ees are engaged in group activity it is considered concerted and existence of group need not be communicated to management)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**

(Ees' refusals to operate crane for safety reasons held concerted activity rather than individual action, since there was some group action by Ees involved in interest of Ee safety, U was also involved by filing C with OSHA concerning potential danger to all Ees, Ees involved acted as spokesmen for safety of all Ees, and their action was undertaken for mutual aid or protection)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(Section 7 protects concerted activity by Ees; and one Ee's request for presence of another unit Ee at an interview is *concerted activity*)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(before R election is held, presence of U representative (at interview) does not have effect on other Ees essential to satisfaction of *Interboro* standard for concerted activity; thus Ee's actions in seeking presence of the representative at that time does not constitute *concerted activity;* but Ee's request for U representation by U which has won challenged election *is protected concerted activity*)

Leo G. Kohls v. N.L.R.B. **629 F.2d 173 (C.A.D.C., 1980)**

(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me,* not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

2017 NOT ALL CONCERTED ACTIVITIES PROTECTED

Fall River Savings Bank **247 NLRB No. 088**

(protected activity's protection not lost because of Ee's being unpleasant, rude or impolite in course of such activity)

2017-0800 Activity of such character as to render employee unfit for further service

F. W. Woolworth Co. **251 NLRB No. 152**

(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**

(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

United States Postal Service **250 NLRB No. 002**

(assuming U steward uttered obscenity toward supervisor in course of formally investigating possible grievance over working conditions on behalf of unit Ee when supervisor failed to ans steward immediately and directly, such utterance was part of *res gestae* of investigation and was not so flagrant or egregious as to remove protection of Act)

2017-1700 Activities tending to disrupt employer's or union's operations

United States Steel Corporation **253 NLRB No. 083**

(Ee's refusal to report to office as directed by supervisor, unprotected, as it undermined E's right to maintain discipline and order)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**

(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Anco Insulations, Inc. **247 NLRB No. 081**

(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

Giant Food Markets, Inc. and S. S. Kresge Company v. N.L.R.B. **633 F.2d 18 (C.A. 6, 1980)**

(remand for evidence on effect of relocating, pursuant to TRO, area standards pickets from private property near store entrance to public area across parking lot at entrance to 2-store shopping center and to determine, (1) whether picketing at store entrance is protected, and (2) whether E's peaceful demand that pickets leave, violated 8(a)(1))

2017-3300 Cessation of work for personal reasons

Ontario Knife Company **247 NLRB No. 168**

(Ee's walkout held protected concerted activity, even assuming that supervisor's *off color* remarks were proximate cause of Ee's personal decision to walk out, since supervisor's statements must be considered in context of entire conversation between Ee and supervisor regarding Ee's grievance, which was clearly protected concerted activity, and *off color* remarks particularly emphasized that supervisor was unwilling to consider seriously Ee's complaint)

2017-5000 Resort to prohibited means

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**

(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns

2017-5000—Cont.

was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Bechtel Incorporated **248 NLRB No. 158**

(neither Ees' daily repetition of action contrary to supervisor's express instructions and to work rule they had admittedly received was protected where Ees resorted to self-help to impose their chosen terms rather than grieve their work rules dispute, nor was their refusal to sign resulting warning slips which refusal was in support of and inseparable from their prior insubordination)

2017-9100 Conduct in derogation of bargaining representation

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**

(Ees' demand for premium pay for working on *short* crew and strike in support thereof not unprotected where demand was not in derogation of U's status as bargaining representative and not a demand for unlawful unilateral change by E)

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**

(Ee labor organization's posting on bulletin board of notices seeking to continue its solicitation of Ees' grievances so as to continue negotiating with E over grievances which should have been processed through contractual grievance procedure held unprotected, since posting was in continued derogation of certified U which was Ees' lawful representative)

2033 BOARD HAS FUNCTION OF BALANCING CONFLICTING EMPLOYEE AND EMPLOYER INTERESTS

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill *Weingarten* functions than is another Ee)

N.L.R.B. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, Teamsters **630 F.2d 505 (C.A. 7, 1980)**

(in denying enforcement of Bd's findings that E's dismissal of Ees was unlawful, ct stated that Bd had failed to consider E's legitimate business interest, or to balance Ee's right to ptn against E's right to performance of assigned duties in loyal manner)

3000 REFUSAL TO CROSS PICKET LINE

3067 AT OWN EMPLOYER'S PREMISES

3067-5000 As result of sympathy strike

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**

(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

4000 OBJECTIVE AS DETERMINANT OF PROTECTED STATUS OF ACTIVITY

4033 OBJECTIVES WARRANTING PROTECTION OF ACTIVITY

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

4033-0300 Educating fellow employees regarding employment problems

Fun Striders, Inc. **250 NLRB No. 087**

(distribution of literature containing inflamatory political material protected where it also referred to many matters dealing with employment relationship)

Koch Supplies, Inc. **249 NLRB No. 160**

(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and was thus not aimed at solving personal problem but included welfare of others)

Special Machine and Engineering, Inc. **247 NLRB No. 077**

(Ee's posting wage and classification scale of another E on union bulletin board at plant where employed held protected concerted activity since material was not, as contented, *want-ad* but, relevant to union business)

Edward Blankstein, Inc. v. N.L.R.B. **623 F.2d 320 (C.A. 3, 1980)**

(Ee who contacted other Ees to interest them in obtaining group hospitalization insurance was engaged in protected concerted activity as she was not acting solely for herself)

4033-0600 Holding union or employee meeting

Church's Fried Chichen, Inc. **JD-(SF)-301-79**

4033-1100 Protesting lawful discharge

Go-Lightly Footwear, Inc. **251 NLRB No. 008**

(walk out by Ees in support of discharged Ee, plus picketing outside plant with placards referring to unkept promises by E, to scab labor, and to unfairness to minorities reasonably relates to matters protected by Act; and there was no requirement that Ees had to undertake less drastic forms of protest before walking off their jobs)

4033-1200 Criticizing or protesting actions of supervisor

Pacific Coast International Meat Co. **248 NLRB No. 183**

(Ees complaining about supervisor's continual threats of discharge and favoritism in allocating work, protected)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**

(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

Radiator Specialty **JD-539-80** **tional Gypsum Company**

JD-462-80

4033-1300 Attempting to ask question at employer's antiunion meeting

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**

(discharge of Ee for conduct at E-Ee meeting violative as Ees were discussing employment terms with E)

4033-1700 Protesting employment practices based on racial and other minority group considerations

Honeywell, Inc. **250 NLRB No. 019**

(Ee's criticism of E's promotion policy as being racially motivated constitutes protected concerted activity)

4033-1800 Protesting employment practices based on sex condiderations

Paul Stuart, Inc. **JD-140-80**

4033-1900 Enforcing a State Employment standard

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**

(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

4033-2600 Protesting overtime

Chipmore Manufacturing Co., Inc. **JD-432-80**

(strike protesting making overtime mandatory where it had previously been optional, protected)

Malibu Grand Prix Corp. **JD-(SF)-90-80**

(concerted refusal to work overtime presumptively protected where there was no bargaining relationship, only inchoate relationship with U which did not provide *structured procedures* for conflict resolution)

4033-2800 Protesting deprivation of overtime

Lane Trenching, Inc. **247 NLRB No. 183**

(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

4033-3000 Seeking assistance of union representative at investigatory interview

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(in *Weingarten* SCt endorsed Bd's view that *Ee* must request representation)

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(denial of Ee's request for presence of U steward at disciplinary interview with maintenance superintendent not violative where Ee's call to U steward prior to interview was not effective invocation of Ee's *Weingarten* rights, since maintenance superintendent was not *privy* to call to U steward; therefore, request not directed to official who is in position to grant or deny request)

Stewart-Warner Corporation **253 NLRB No. 016**
(*Weingarten* rights do not attach to meeting between supervisor and Ee intended to clarify Ee's duties or to set forth plant safety rules with no disciplinary overtones)

Kahn's and Company, Division of Consolidated Food Co. **253 NLRB No. 004**
(denial of Ee's request for U Representative during investigative interview in which he was discharged, violative; discharge itself is not independent violation of 8(a)(1) where it is unrelated to exercise of *Weingarten* rights)

General Motors Corporation **251 NLRB No. 121**
(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **251 NLRB No. 122**
(no violation of Ee's right to have representative at interviews with E concerning Ee's suspension and then discharge for excessive tardiness where purpose of interviews was to announce and implement previously determined disciplinary action; E had decided respectively to suspend and to discharge Ee before meetings, on basis of facts which it had obtained w/o talking to Ee; see *Baton Rouge Water Works* 246 NLRB No. 161 (1979))

Roadway Express, Inc. **251 NLRB No. 138**
(supervisor's refusing Ee's request for U representation during interview regarding Ee's suspension for violating E's rule concerning coffee breaks while driving truck held violative, since interview was disciplinary rather than investigative; disciplinary action had to be taken if violation of E's rule had in fact occurred)

Amoco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

Kraft Foods, Inc. **251 NLRB No. 006**
(effectively depriving Ee who was involved in forklift accident and fight with another Ee, of his right to U representation at investigatory interview which Ee reasonably believed might result in disciplinary action unless U representative was present, violative)

Texaco, Inc. **251 NLRB No. 063**
(E who instructed U representative that he must remain silent during interview of Ee relating to his possible misconduct on job violated Act as *Weingarten* right to representation includes not only presence of representative but also active assistance where confrontation threatens Ee's job security)

Texaco, Inc. **251 NLRB No. 063**
(E who required U representative to remain silent during meeting with Ee held solely for purpose of informing him of 3-day suspension did not violate Act as E is not statutorily obligated to furnish representation at such interview and thus fact that representative was required to remain silent irrelevant)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E who insisted that U steward remain silent during investigatory interview violated Act as mere presence of steward while Ee was being interrogated about alleged theft of company property is insufficient to alter inbalance which SCt sought to allevaiate in its *Weingarten* decision)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(denying Ee presence of U steward at meeting between E and Ee not violative where sole purpose of meeting was to inform Ee of her discharge as *Weingarten* does not apply to meetings held for such purposes)

Illinois Bell Telephone Company **251 NLRB No. 128**
(Ee entitled to have any Ee present with her at disciplinary meeting with E and E's refusal to allow anyone but Ee with official U status be present, violative)

Southern Bell Telephone and Telegraph **251 NLRB No. 159**
(refusal of Ee's request for U representative to be present at investigatory meeting made when Ee became aware that meeting might *result in disciplinary action* against her, and imposition of discipline for conduct which was subject of interview, violative)

Coyne Cylinder Company **251 NLRB No. 198**
(E's interview of Ee violated Ee's *Weingarten* rights where, prior to interview, no final decision had been made whether to discharge Ee for smoking marijuana during his lunch breaks and E denied Ee's request made during interview to have U representative present during remainder of interview)

Coyne Cylinder Company **251 NLRB No. 198**
(*Weingarten* rights do not extend to allowing Ee to produce witnesses on his behalf)

Coyne Cylinder Company **251 NLRB No. 198**
(where other Ees were discharged for same offense charging party accused of, he had reasonable basis to believe discipline was in offing when called for interview)

Prudential Insurance Company of America **251 NLRB No. 213**
(where E conducted investigatory interview with *disciplinary* overtones and denied Ee's request for U representative to be present and failed to offer Ee options of continuing interview w/o U representative or discontinuing interview, it violated Act; no management right to secure information from Ee absent requested U representatory interview with disciplinary overtones)

United Telephone Company of Florida **251 NLRB No. 101**
(*test for determining whether Ee reasonably believes interview might reasonably result in disciplinary action is measured by objective standards under all circumstances of the case rather than by Ees subjective motivations)*

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**
(*Weingarten* rights attach prior to decision on discipline)

First National Supermarkets, Inc. d/b/a Pick-N-Pay Supermarkets, Inc. **247 NLRB No. 162**
(where Ee did not request U representation at disciplinary meeting no *Weingarten* violation exists; moreover, fact that discipline was justified is not determinative)

Wolverine World Wide, Inc. **JD-185-80**
(discipline and ultimate discharge of Ee for her refusal to leave her work station w/o being accompanied by Ee representative to attend meeting with supervisor which she believed could result in imposition of discipline not violative for Ee has no protected right to refuse to go to office and can be lawfully disciplined for such refusal; See *Roadway Express* 246 NLRB No. 180 overruling *Glomac Plastics* 234 NLRB 1309)

Wolverine World Wide, Inc. **JD-185-80**
(Ee's rights were not violated where she was denied presence of Ee representative at interview with E as sole purpose was to inform her that decision had already been made to discharge her; See *Baton Rouge* 246 NLRB No. 161)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation where personnel manager required Ee to participate in absence-counseling interview w/o U representation, since personnel manager had authority to approve absence and unapproved absence could result in discipline)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, presence of U representative (at interview) does not have effect on other Ees essential to satisfaction of *Interboro* standard for concerted activity; thus Ee's actions in seeking presence of the representative at that time does not constitute *concerted activity;* but Ee's request for U representation by U which has won challenged election *is protected concerted activity*)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill *Weingarten* functions than is another Ee)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(*Weingarten* protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

Spartan Stores, Inc. v. N.L.R.B. **628 F.2d 953 (C.A. 6, 1980)**
(Bd finding that Ee was discharged for refusing to participate in interview he reasonably believed could result in disciplinary action w/o U representation reversed, since substantial evidence did not support Bd's application of *Weingarten* doctrine where Ee had no reasonable grounds to believe that interview might result in his discipline after E gave assurances that it would not, and concomitantly, Ee's action of getting steward himself, contrary to established policy that supervisor would summon steward upon Ee's request and orders of supervisors, does not imply possible disciplinary action)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**

4033-3000—Cont.

(ct held contrary to Bd that Ee during disciplinary interview waived any right to U representation when Ee decided to proceed with meeting w/o U stewards present)

4033-3200 Employee's advising other employees of right to file charges with Board

Hotel & Restaurant Employees and Bartenders Union Local 2 **JD-(SF)-178-80**
(Ee's advising other Ees of right to file charges with Bd against E held protected activity)

4033-3500 Seeking union membership or representation

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**

4033-3900 Performance of union representative's duties

United States Postal Service **252 NLRB No. 083**
(U representative seeking to honor Ee's request for U representation will be deemed protected activity)

4033-4100 Demanding compliance with union contract

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(Ees who pursue in good faith alleged mistaken interpretation of contract are engaged in protected activity and do not forfeit protection of Act)

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge into suspension and written warning because he refused to drive tractor-trailer which he honestly and reasonably believed to be unsafe held unlawful, since refusal was right Ee was at liberty to exercise under contract even though at time of refusal he had not made any specific reference to contract)

Albertsons, Inc. **252 NLRB NO. 081**
(discharge of Ee for insistence on break periods provided for in collective-bargaining agreement violative)

Clayton Construction Corporation **250 NLRB No. 121**
(U steward's protests against E's assignment of work to another Ee as contrary to contract, protected)

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Colonial Stores Incorporated **248 NLRB No. 142**
(part-time Ee and her non-Ee husband's circulating ptn among Ees during non-working time stating that E was not complying with contract provision requiring it to maintain greatest possible number of full-time job and that, if U failed to make E adhere to agreement, Ees were not getting full representation, held protected concerted activity notwithstanding that Ee was trying to gain more hours of employment for herself; ptn involved matters of obvious concern to Ees and, moreover, other Ees signed the ptn)

Colonial Stores Incorporated **248 NLRB No. 142**
(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights*, Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

Blaw-Knox Foundry & Mill Machinery **247 NLRB No. 36**
(complaint of female Ee and co-worker concerning offensive touching of female's person by supervisor held concerted, protected protest against working conditions and effort to enforce contract)

Evans Plumbing Company **JD-(ATL)-15-80**
(Ees' questioning E about his failure to send payments to U's vacation fund as required in contract, protected activity)

Redman Construction Company, Inc. **JD-(SF)-105-80**
(discharge of Ee who sought to implement contractual benefits regarding overtime pay violative irrespective of whether asserted claims are found meritorious)

4033-4900 Obtaining wage increase

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company **251 NLRB No. 147**
(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**
(discharge of Ee who acted as spokesman to express dissatisfaction to E about Ees' wages and working conditions, unlawful, where discharge was motivated by *disturbance* created by Ee in registering such dissatisfaction)

AAR Technical Service Center **249 NLRB No. 176**
(letter written by disgruntled Ee who had been denied pay raise he thought he deserved not protected where it contained threats to sabotage E's product)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(Ee demanding improvement of wages, pensions, and health benefits held concerted activity rather than effort to obtain objective only for self, since Ee's demands would inure to benefit of all Ees; moreover, Ee had spoken to several of his fellow Ees and apprised them of his intentions and they had not expressed disinterest in his taking action)

General Warehouse Corp. **247 NLRB No. 142**
(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

Professional Ambulance Service of Middlesex **JD-548-80**
(discharging ambulance EMT attendant for attempting to induce other Ees to strike in support of demand for increased wages, violative, although Ee denied activity and believed that state's Abandonement Law prohibited strikes)

Royal Travel Corporation **JD-306-80**

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(Ee's going into E's office together to request increase in salaries and pay for overtime upheld as concerted protected activity; determination thereof need not be premised, as E claimed, on finding of *prior requests or constant complaints by employees culminating in a labor dispute* but may be activity taking place at same time demand is made)

4033-5100 Protesting pay shortages

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(Ee engaged in protected concerted activity when he pressed his claim for travel pay and refused to cooperate with E in its attempt to defend against claims made by Wage and Hour Division of U.S. Department of Labor)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**

4033-5200 Refusing to work without pay

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(Ee's comment, made in presence of coworkers, that another Ee should not start work until time set by E held concerted activity, since remark was attempt to induce fellow Ees not to perform work for which they would not be paid)

4033-5300 Protesting change in computing pay (piece rate, etc.)

Herman Brothers, Inc. **252 NLRB No. 121**
(driver not deemed to have voluntarily quit pursuant to rule that would consider drivers as having quit where they failed to report their availability for work for three days, but rather discharged, since motivating factor in E's action was driver's circulating letter opposing provision in proposed bargaining contract which would substitute mileage for number of hours worked as basis for computing drivers' wages)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(refusing to work at reduced piecework rates)

4033-5500 Protesting working conditons

Jim Causley Pontiac, Division Jim Causley, Inc. **253 NLRB No. 101**
(Ee who filed complaint with State Health Department engaged in protected concerted activity and E found to have knowledge of concerted nature of activity where E was aware State complaint form filled out with plural pronoun *we* where complaint form identified area of shop where discriminatee and other Ee worked, listed paint fumes as hazard and in past many Ees had complained to E about fumes and evidence that many Ees had discussed poor ventilation system, complaining to management)

Service Machine & Shipbuilding Corp. **253 NLRB No. 088**
(simultaneous, spontaneous refusal of four welders to work in the rain held concerted protected activity, where one of them expressed fear of illness as result thereof; moreover, testimony showed that they felt danger of electrical shock so apparent that comment on it to supervisors was unnecessary)

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(Ees protest to E about working along side Ee with suspected health problem protected activity)

4033-5500—Cont.

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge into suspension and written warning because he refused to drive tractor-trailer which he honestly and reasonably believed to be unsafe held unlawful, since refusal was right Ee was at liberty to exercise under contract even though at time of refusal he had not made any specific reference to contract)

Irvin H. Whitehouse & Sons Company **252 NLRB No. 140**
(discharge of Ees who refused to work because of safety hazards violative where contract did not contain no-strike provision)

E. R. Carpenter Co. **252 NLRB No. 005**
(discharging Ees for refusing to work in toxic atmosphere in deteriorating moon suits, violative where Ees were concerned not only about unsanitary nature of the suits, but also about holes in suits and possibility that toxic fumes were passing through the holes; Ees had good-faith belief that their working conditions were dengerous and this alone rendered their refusal to work protected)

Hawthorne Mazda, Inc. **251 NLRB No. 038**
(Ee held engaged in protected concerted activity where he had been instrumental in securing fellow Ees' support in form of ptn for confronting E's management with their concerns regarding, pay, scheduling, and lack of a changing room; in securing meeting at which concerns could be addressed; and in presenting concerns to management in a way that conveyed their group nature, with Ee acting as spokesman for Ees in commuhicating with management which knew he was acting in that capacity)

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Anco Insulations, Inc. **247 NLRB No. 081**
(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Bucyrus-Erie Company **247 NLRB No. 059**
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

Blaw-Knox Foundry & Mill Machinery **247 NLRB No. 36**
(complaint of female Ee and co-worker concerning offensive touching of female's person by supervisor held concerted, protected protest against working conditions and effort to enforce contract)

The Pacific Telephone and Telegraph Company **JD-(SF)-322-80**
(U steward's activity in seeking action from supervisor regarding matters of common concern to maintenance Ees (private telephones, private break facilities, taxi service for female Ees who worked late comparable to that afforded E's female office Ees) held protected)

Alaga Whitfield Foods, Inc. **JD-504-80**
(discharge of Ee truckdrivers who refused to work because of violence occurring on highway in independent trucker's protest violative, as Ees' activity protected because of safety concerns)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

Public Services Planning and Analysis Corporation,
d/b/a Airport Connection **JD-(SF)-310-79**
(presenting informal complaints to E relating to wages, hours, and other terms and conditions of employment)

Emblematic Jewellry Products of U.S.A., Inc. **JD-814-79**
(work stoppage to protest cancellation of coffee breaks)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(Ees jointly participating in walkout to present job related grievances to E held engaged in protected concerted activity regardless of whether or not Ees are members of U; E, having same options available to him as to E faced with economic strike by U Ees, entitling him to pay Ees who left work, or to replace Ees with other workers, is prohibited from discharging, or threatening to discharge, unorganized Ees involved herein because they engaged in protected concerted activity)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(unorganized Ees who jointly participate in walkout to present job related grievances to E are engaged in protected concerted activity regardless of whether or not they are U members, no distinction exists in Act or its remedies between organized and unorganized Ees who act in concert to deal with their grievances)

Jim Causley Pontiac, Division Jim Causley, Inc. v.
N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**
(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew of other Ee's involvement and that activity in question was concerted)

Carlson Roofing Co., Inc. v. N.L.R.B. **627 F.2d 77 (C.A. 7, 1980)**
(in discussion with E Ees voicing their opposition in orderly fashion to E's interpretation of contract provision that Ees had to work alone on jobs and no Ee flatly refused to work alone, held protected concerted activity)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

Leo G. Kohls v. N.L.R.B. **629 F.2d 173 (C.A.D.C., 1980)**
(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

4033-6400 Protesting financial management of trust fund or benefit plan

Pacemaker Yacht Co., A Division of Mission
Marine, Inc. **253 NLRB No. 095**
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

4033-6600 Protesting removal of supervisor

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(walkout by Ees to protest discharge of low level supervisor who was sympathetic to Ee problems held to have been *protected activity*, since identity and capability of supervisor involved had direct impact on Ees' own job interests)

Emblematic Jewellry Products of U.S.A., Inc. **JD-814-79**
(discharge of supervisor)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. **619 F.2d 153 (C.A. 1, 1980)**
(Ees' strike over discharge of supervisor not protected activity where protest was not over actual conditions of employment of Ees; none of Ees who protested gave slightest indication that discharged supervisor's assistance to their unionization efforts motivated their protest)

4033-7600 Seeking removal of supervisor

Sheraton Puerto Rico Corp. d/b/a Puerto Rico
Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

4033-7700 Protesting designation of supervisor

Ford Motor Company **251 NLRB No. 066**
(Ees who file grievances, civil suits, or ULP charges in protest of E's promotional policies to supervisory positions, protected)

4033-9200 Engaging in intraunion activities

Welfare and Pension Funds, Blasters, Drillrunners
and Miners Union Local No. 29 and Their
Trustees Louis Sanzo, Amadio A. Petito, Paul
Crowley, and Theodore King **251 NLRB No. 165**
(Ee of U pension fund involved in protected intra-U activity when he protested to President of U.S. about loss of U jobs, how members were referred to jobs, sought reelection as secretary-treasurer of U; discharge for such activity violative)

4033-9300 Protesting hiring or job assignment practices

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(Ee's complaint to management regarding their order of recalling Ees and requiring that Ees use their vacation time during period of forced layoff held

4033-9300—Cont.

protected concerted activity; Ee's complaint constituted effort to gain benefit not only for herself but for her coworker and other senior Ees as well)

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company **248 NLRB No. 069**
(protesting job assignment outside Ees' work classification, protected)

Master Painting & Sheeting, Inc. **JD-(SF)-119-80**
(Ees who protested about E's practice of having same Ee be both U steward and foreman engaged in protected concerted activity as possibility of conflict of interest directly related to their conditions of employment)

N.L.R.B. v. Slotkowski Sausage Company **620 F.2d 642 (C.A. 7, 1980)**
(discharge of Ee who chronically complained that he wished to be driver rather than shipping department Ee not violative as Ee was engaged in unprotected unilateral attempt to promote himself; moreover, fact that U represented drivers immaterial because Ee was not employed as driver, never became part of drivers' unit and no U security clause existed so that Ee was not attempting to seek benefits under collective-bargaining agreement)

4067 OBJECTIVES RENDERING ACTIVITIES UNPROTECTED

4067-1000 To obtain objective only for self

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(fact that Ee was not specifically chosen as spokesperson by Ees to speak for them in discussions with supervision was irrelevant to issue of concerted activity, since it was clear that Ee spoke on Ees' behalf as well as her own)

Jim Causley Pontiac, Division Jim Causley, Inc. **253 NLRB No. 101**
(Ee who filed complaint with State Health Department engaged in protected concerted activity and E found to have knowledge of concerted nature of activity where E was aware State complaint form filled out with plural pronoun *we* where complaint form identified area of shop where discriminatee and other Ee worked, listed paint fumes as hazard and in past many Ees had complained to E about fumes and evidence that many Ees had discussed poor ventilation system, complaining to management)

United States Steel Corporation **253 NLRB No. 083**
(Ee's insistence on having *safety men present when he inspected factory cranes for repair found not protected activity where he spoke only himself, not for or in concert with other Ees)*

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company **251 NLRB No. 147**
(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

Koch Supplies, Inc. **249 NLRB No. 160**
(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and was thus not aimed at solving personal problem but included welfare of others)

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 150**
(Ee's filing of claim with state agency held concerted as well as protected activity even if Ee had acted as individual in so doing; here, however, he had also discussed the matter and gone to state office to file claim with other Ees acting in concert with him to seek *mutual aid* and agency's *protection*; moreover E was aware of concerted nature of Ee's conduct)

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Capitol Ornamental Concrete Specialties, Inc. **248 NLRB No. 109**
(complaining about condition of road in Ee parking lot not concerted activity where no evidence that any other Ees had ever complained or even discussed the matter; thus not matter of common concern)

Anco Insulations, Inc. **247 NLRB No. 081**
(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

Scott Paper Company **JD-623-80**
(Ee's alleged concern about safety conditions held not to be concerted where there was no evidence that, at any time, any of his co-Ees showed *concern* as to safety of operation, and he did not consult any other Ee before his refusal to perform assigned task)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's refusal to comply with company policy that Ees furnish description or map to place to where they live when they gave company post office box as address, not protected, since reason was personal one of not wanting former wife to know where he lived; nor did fact Ee spoke to other Ees about his refusal, implying E wanted information to check up on sick leave make activity concerted where Ee was simply advertising his own defiance)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's refusal to show E marriage license to verify fact of marriage for purpose of insurance coverage for which only spouses and dependents were eligible, not protected, where Ee had first requested coverage for wife prior to marriage and E had no proof of her subsequent eligibility; Ee's refsual was personal rather than concerted, and he was not enforcing contract right)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee of public utility drafting letter to TV station and showing it to other Ees in which he stated that *consumer is being rolled over by utility monopolies*, not protected, since Ee wrote as consumer and stock holder, letter was not directed at improvement in conditions for Ees but was motivated by personal vendetta)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's writing letter to E's insurance supervisor concerning E's refusal to extend insurance coverage to his new wife w/o seeing marriage certificate and in which he called company officials insulting names, not protected, since letter not attempt to enforce contract right but was simply personal diatribe)

Giuliem Apparel Corp. **JD-162-80**
(Ee's leaving work early because she was too cold held not to constitute protected concerted activity where cold temperature was localized at Ee's work station and was therefore not matter of concern to other Ees that day and there was no evidence that Ee was seeking to advance common interest)

Edward Blankstein, Inc. v. N.L.R.B. **623 F.2d 320 (C.A. 3, 1980)**
(Ee who contacted other Ees to interest them in obtaining group hospitalization insurance was engaged in protected concerted activity as she was not acting solely for herself)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**
(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew of other Ee's involvement and that activity in question was concerted)

N.L.R.B. v. Slotkowski Sausage Company **620 F.2d 642 (C.A. 7, 1980)**
(discharge of Ee who chronically complained that he wished to be driver rather than shipping department Ee not violative as Ee was engaged in unprotected unilateral attempt to promote himself; moreover, fact that U represented drivers immaterial because Ee was not employed as driver, never became part of drivers' unit and no U security clause existed so that Ee was not attempting to seek benefits under collective-bargaining agreement)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

Leo G. Kohls v. N.L.R.B. **629 F.2d 173 (C.A.D.C., 1980)**
(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

4067-9000 Employee's bad faith, knowledge of falsity, intent to harass, or similar improper motives

AAR Technical Service Center **249 NLRB No. 176**
(letter written by disgruntled Ee who had been denied pay raise he thought he deserved not protected where it contained threats to sabotage E's product)

4067-9500 Disloyalty of employees

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee of public utility drafting letter to TV station and showing it to other Ees in which he stated that *consumer is being rolled over by utility monopolies*, not

4067-9500—Cont.

protected, since Ee wrote as consumer and stock holder, letter was not directed at improvement in conditions for Ees but was motivated by personal vendetta)

Misericordia Hospital Medical Center v. N.L.R.B. **623 F.2d 808 (C.A. 2, 1980)**
(Ees of hospital preparing report for accrediting authority catagloging alleged inadequacies in operation of hospital held protected activity since matters considered involving working conditions; Section 7 protection not lost by seeking relief outside E-Ee relationship, nor did report constitute disloyal statement outside Section 7 protection)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining rule which forbids false, vicious or malicious statements about company, its Ees, its products, or methods of manufacture, unlawful, since rule not limited to maliciously false statements but also included merely false statements; further, E may not justify promulgation of broad rule by its need to protect itself from disloyal statements but rather must meet need by rule limited to disloyal statements)

6000 FORMS OF ACTIIVITY

6020 PICKET LINE ACTIVITIES

6020-0100 Generally

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(picket line activity is generally protected. and the duty of going forward with evidence of conduct which would remove mantle of statutory protection is upon Respondent if, upon such alleged misconduct, it bases its post-strike employment decisions)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

Giant Food Markets, Inc. and S. S. Kresge Company v. N.L.R.B. **633 F.2d 18 (C.A. 6, 1980)**
(remand for evidence on effect of relocating, pursuant to TRO, area standards pickets from private property near store entrance to public area across parking lot at entrance to 2-store shopping center and to determine, (1) whether picketing at store entrance is protected, and (2) whether E's peaceful demand that pickets leave, violated 8(a)(1))

6050 STRIKE ACTIVITY

6050-0100 Generally

Professional Ambulance Service of Middlesex **JD-548-80**
(discharging ambulance EMT attendant for attempting to induce other Ees to strike in support of demand for increased wages, violative, although Ee denied activity and believed that state's Abandonement Law prohibited strikes)

6050-0133 Limitations on right to strike must be narrowly construed

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

6050-0183 Activities constituting participation in strike

Charge Card Association **247 NLRB No. 119**
(Ees who called in sick in protest of their grievances were strikers engaged in protected concerted activity)

6050-1200 What constitutes strike

6050-1220 Cessation of work

Alaga Whitfield Foods, Inc. **JD-504-80**
(discharge of Ee truckdrivers who refused to work because of violence occurring on highway in independent trucker's protest violative, as Ees' activity protected because of safety concerns)

6050-1240 Spontaneous work stoppage as walkout

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(walk out by Ees in support of discharged Ee, plus picketing outside plant with placards referring to unkept promises by E, to scab labor, and to unfairness to minorities reasonably relates to matters protected by Act; and there was no requirement that Ees had to undertake less drastic forms of protest before walking off their jobs)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(while Ees violated company rules when they walked off job w/o punching out and w/o notifying their supervisor, their walk out did not lose protection of Act because of violations of those kinds of rules; although existence of those rules could be significant if Ees had engaged in series of short-term walkouts, or even if they had planned to do so, here there was only one walkout and no evidence of any plan to undertake any more)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(Ee's refusal to work rest of the day after Ees she had walked off job with returned to work held protected, since Ee's decision to do so was integral part of protest about employment conditions at plant, and E, who fired all Ees engaged in walk out, made no distinction in its reaction to Ee's activities when she was acting directly in concert with her fellow Ees and when she departed for remainder of day)

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company **248 NLRB No. 069**
(departure from plant after refusing to perform assigned duties and effort to see management to complain about assignment held strike)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(spontaneous banding together of Ees in form of work stoppage as manifestation of their disagreement with E's conduct in changing certain duties from voluntary basis to assigned work held protected concerted activity)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(Ees jointly participating in walkout to present job related grievances to E held engaged in protected concerted activity regardless of whether or not Ees are members of U; E, having same options available to him as to E faced with economic strike by U Ees, entitling him to pay Ees who left work, or to replace Ees with other workers, is prohibited from discharging, or threatening to discharge, unorganized Ees involved herein because they engaged in protected concerted activity)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(unorganized Ees who jointly participate in walkout to present job related grievances to E are engaged in protected concerted activity regardless of whether or not they are U members; no distinction exists in Act or its remedies between organized and unorganized Ees who act in concert to deal with their grievances)

6050-6200 Effect of no-strike agreements

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

6050-6220 Agreement must be interpreted in light of entire contract

Irvin H. Whitehouse & Sons Company **252 NLRB No. 140**
(contract containing provision requiring disputes to be referred to Joint Local Trade Board for arbitration not found to contain no-strike clause where section concerning safety does not directly state that those disputes be submitted to final and binding arbitration and clause is silent as to fines or remedial actions)

6050-7500 Unprotected strikes

6050-7530 Activity in violation of section 8(g)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(walkout by two nurses aides held not to have lost protection under Sec. 8(g), notwithstanding their failure to give 10 days' notice of intent to strike, since Sec. 8(g) does not apply where labor organization is not involved, and strike here did not involve labor organization, and E and U were not then discussing issue which precipitated strike)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(doctors' strike in sympathy with striking unionized Ees at health care institution held protected as to Sec. 8(g) notwithstanding lack of notice to E, in view of 8(g) language applying only to labor organizations and not individuals, legislative history focusing on large scale and not individual activity, and purpose of giving health care institutions enough notice to arrange for patient care - doctors here created no danger or risk of harm to patients)

6050-7570 Strike to compel unlawful act

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(Ees' demand for premium pay for working on *short* crew and strike in support thereof not unprotected where demand was not in derogation of U's status as bargaining representative and not a demand for unlawful unilateral change by E)

6050-7580 Strike in violation of no-strike agreement

Owens-Corning Power and Process, a Division of Owens-Corning Fiberglas, Inc. **JD-(SF)-208-80**
(where Ees engaged in economic strike which was initially rendered unprotected by breach of no-strike clause, E's later condonation of strike by reinstatement of strikers and its agreement that *the slate would be wiped clean* estopped it from asserting unlawful nature of strike)

6050-8700 Sympathy strike

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(doctors' strike in sympathy with striking health care institution Ees lost protection of Act as sympathy strike when doctors discouraged patients from entering clinic by telling them at picket line, in reckless disregard of truth or falsity of their statements, that they could not be taken care of at clinic; such misconduct went beyond limits of fair persuasion and honest appeals to public)

6060 STATEMENTS REGARDING EMPLOYER'S LABOR RELATIONS

6060-5000 Derogatory remark in context of protected activity

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(where unlawfully discharged Ee distributed letter derogatory to E after ALJ issued decision, Ee entitled to reinstatement as letter stated truth about his discharge and repeated his original offer to represent Ees concerning matters of common concern)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(picketing Ees' conversations with newspaper reporter, advising him of placards used in picketing and about E's alleged favoritism and misleading employment advertisements held protected, since Ees do not lose Act's protection merely because they choose to use *channels outside the immediate E-Ee relationship*)

Pioneer Finishing Corporation **247 NLRB No. 182**
(leaflet distributed by Ees to other Ees critical of E's safety conditions, although not accurate representations of fact, constituted concerted protected activity; leaflet's statements were mere *rhetorical hyperbole* and were not intended nor understood as representations of fact)

6060-6700 Truth of statement not proper test

Pioneer Finishing Corporation **247 NLRB No. 182**
(leaflet distributed by Ees to other Ees critical of E's safety conditions, although not accurate representations of fact, constituted concerted protected activity; leaflet's statements were mere *rhetorical hyperbole* and were not intended nor understood as representations of fact)

6070 STATEMENTS REGARDING EMPLOYER'S BUSINESS

6070-2500 Defamation of employer's product not protected

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(while Ees complaints to third party regarding incompetency of management or vilification of E's product may in certain situations consituted unprotected activity. E must have, at very least, honestly held belief that Ee engaged in such serious acts of misconduct before taking punitive action)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(doctors' strike in sympathy with striking health care institution Ees lost protection of Act as sympathy strike when doctors discouraged patients from entering clinic by telling them at picket line, in reckless disregard of truth or falsity of their statements, that they could not be taken care of at clinic; such misconduct went beyond limits of fair persuasion and honest appeals to public)

6070-5000 Derogatory remark in context of protected activity protected

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(picketing Ees' conversations with newspaper reporter, advising him of placards used in picketing and about E's alleged favoritism and misleading employment advertisements held protected, since Ees do not lose Act's protection merely because they choose to use *channels outside the immediate E-Ee relationship*)

Allied Aviation Service Company of New Jersey, Inc. **248 NLRB No. 026**
(Ee's letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft held concerted protected activity since Ees may properly communicate with third party in order to obtain latter's assistance where communication is related to legitimate ongoing labor dispute between Ees and E, and communication does not constitute disparagement of E's product or reputation)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(while Ees complaints to third party regarding incompetency of management or vilification of E's product may in certain situations consituted unprotected activity. E must have, at very least, honestly held belief that Ee engaged in such serious acts of misconduct before taking punitive action)

Tribal American Consulting Corporation **JD-(SF)-314-80**
(Ees' meeting with newspaper reporter and discussing alleged improprieties and withdrawal of federal funding of child development center)

Misericordia Hospital Medical Center v. N.L.R.B. **623 F.2d 808 (C.A. 2, 1980)**
(Ees of hospital preparing report for accrediting authority catagloging alleged inadequacies in operation of hospital held protected activity since matters considered involving working conditions; Section 7 protection not lost by seeking relief outside E-Ee relationship, nor did report constitute disloyal statement outside Section 7 protection)

6070-7500 Good faith in misrepresenting facts relevant

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining rule which forbids false, vicious or malicious statements about company, its Ees, its products, or methods of manufacture, unlawful, since rule not limited to maliciously false statements but also included merely false statements; further, E may not justify promulgation of broad rule by its need to protect itself from disloyal statements but rather must meet need by rule limited to disloyal statements)

6080 ACTIVITIES IN SUPPORT OF UNION

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(solicitation by U council's Ees of state international organization, which involved matters relating to wages, hours, and working conditions, and their seeking and obtaining aid of state organization's president in transmitting resolution concerning discharge of Ee by council to parent organization's president held protected)

6080-0800 Enlistment of third party support or representation

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(Ee-staff members of U council held not to have engaged in unprotected activity in securing assistance of state labor organization's president in transmitting to parent organization's president resolution calling for reinstatement of Ee discharged by council; bargaining representative has broad discretion in selecting those individuals in organization it desires to act on its behalf, and it also has largely unfettered discretion in seeking and obtaining from others aid it may need to fulfill its statutory representative responsibilities)

6080-8700 Obtaining information for union

Wilson Foods Corporation **JD-(SF)-272-80**
(after E refused to supply data on job classification, brackets assigned to jobs, and wages to U president per request by International, his speaking with Ees on plant floor to obtain data, after end of shift, held protected, notwithstanding he violated plant rule by not securing foreman's permission to talk on plant floor)

6085 FILING LAW SUITS AGAINST EMPLOYER

Dickran Keosaian v. N.L.R.B. **630 F.2d 36 (C.A. 1, 1980)**
(discharge of Ee for calling E's bank with misinformation about E forming credit union with that bank (an illegal activity) and threatening to sue both E and bank, not violative, as Ee's calls were not protected and clearly exceeding bounds of protected activity; also no evidence that E had any other motivation for Ee's discharge)

6090 OTHER FORMS OF ACTIIVITIES PROTECTED

6090-0100 Generally

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(so long as concerted activity is not unlawful, in breach of contract or disloyal, Ees engaged in concerted activity do not lose protection of Act simply because their activity contravenes E's rule or policies; application of Sec. 7 of Act does not depend on manner in which Ees choose to press despute, but rather on matter they are protesting)

6090-0200 Solicitation on behalf of union

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(discharge of U activist assertedly for talking U on her break while Ee was working violative where U activist did not interfere with her own or other Ee's work)

6090-0500 Distribution of literature

Fun Striders, Inc. **250 NLRB No. 087**
(distribution of literature containing inflamatory political material protected where it also referred to many matters dealing with employment relationship)

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

Texas Instruments Incorporated **247 NLRB No. 037**

6090-0500—Cont.

(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing --*strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

6090-0600 Holding union or employee meeting

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(vowing to E to meet *outside management's presence* with other Ees to discuss common concerns relating to conditions of employment)

6090-0700 Attempts by employees to change representative's attitude toward particular bargaining subject

Colonial Stores Incorporated **248 NLRB No. 142**
(part-time Ee and her non-Ee husband's circulating ptn among Ees during non-working time stating that E was not complying with contract provision requiring it to maintain greatest possible number of full-time job and that, if U failed to make E adhere to agreement, Ees were not getting full representation, held protected concerted activity notwithstanding that Ee was trying to gain more hours of employment for herself; ptn involved matters of obvious concern to Ees and, moreover, other Ees signed the ptn)

6090-1200 Invocation of terms of collective bargaining agreement

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's refusal to show E marriage license to verify fact of marriage for purpose of insurance coverage for which only spouses and dependents were eligible, not protected, where Ee had first requested coverage for wife prior to marriage and E had no proof of her subsequent eligibility; Ee's refsual was personal rather than concerted, and he was not enforcing contract right)

Public Service Company of New Mexico **JD-(SF)-157-80**
(Ee's writing letter to E's insurance supervisor concerning E's refusal to extend insurance coverage to his new wife w/o seeing marriage certificate and in which he called company officials insulting names, not protected, since letter not attempt to enforce contract right but was simply personal diatribe)

Leo G. Kohls v. N.L.R.B. **629 F.2d 173 (C.A.D.C., 1980)**
(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

6090-1600 Acting as union steward or officer

Master Painting & Sheeting, Inc. **JD-(SF)-119-80**
(Ees who protested about E's practice of having same Ee be both U steward and foreman engaged in protected concerted activity as possibility of conflict of interest directly related to their conditions of employment)

6090-2400 Circulation of petition to obtain time off for holiday season

Pyromactics, Inc. **251 NLRB No. 141**
(E's contention that Ee's circulation of ptn for obtaining holiday season time off did not relate to mutual aid and protection of Ees, rejected, in view of use of term *hours* in Sec. 8(d)'s definition of *collective bargaining*, as term used in Sec. 7, as *conferring with respect to wages, hours, and other terms and conditions of employment*: in view thereof, collective request for time off cannot be conceived as not protected under Sec. 7; and leaves of absence have been found bargainable, and thus a term or condition of employment)

6090-3200 Wearing or otherwise displaying union insignia or signa

The Nestle Company **248 NLRB No. 106**
(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

Pay 'N Save Corporation **247 NLRB No. 184**
(right to wear U buttons is legitimate form of U activity)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(wearing of arm band with U insignia not protected in hospital setting where arm band superimposed on uniform was highly obtrusive)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(Ees' display of sign urging boycott of E's product held concerted protected activity, notwithstanding E's contention that Bd's finding to that effect unlawfully interfered with enforcement of E's rule prohibiting boycottsigns on E's premises necessary for maintaining plant securityand avoiding incidents at plant gates; prohibition was not justified by special circumstances inasmuch as sign was displayedover mile from any work facility, and wording was not so provocative as to remove protection of Act)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(Ees' decision to display sign urging boycott of E's product held not rendered unprotected even if fear of picketing strikers played a part in their decision to do so, since fear was not sole motivating factor inasmuch asEe's were also motivated by desire to encourage strikers)

6090-3300 Discussion between employees about possibility of joining union in order to secure benefits

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

6090-4200 'Griping' to other employees about working conditions

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(raising matters of mutual concern with other Ees relating to wages, hours, and other terms and conditions of employment)

6090-4900 Invocation of Board processes (see also 8(a)(4))

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(while finding it unnecessary to pass on 8(a)(4) portion of complaint on basis of which ALJ found that U steward's suspension and discharge violated 8(a)(4); as well as 8(a)(3), Bd found that E interfered with statutorily protected right to file charges and present testimony to Bd by giving unexcused absences to Ees, who gave last minute notice from work, after E learned that they went to Bd's Regional Office)

Giant Food, Inc. **252 NLRB No. 182**
(Ee who urged another Ee to aid U by supporting its objections to election involved in protected activity not harrassment and discharge violative; moreover, E's belief that had Ee engaged in misconduct does not justify discharge where in fact he had not engaged in such misconduct)

St. Regis Paper Company **247 NLRB No. 105**
(statements to Ees that filing ULP charges against E could lead to plant closure held violative)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(refusal to pay benefits to discharged Ee, to whom E promised one-half month's salary as post-termination pay, held violative inasmuch as E treated Ee differently than other discharged Ees because of Ee's expressed intent to seek redress from Bd)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(complainants who *mistakenly* seek to invoke Bd processes considered w/i Sec. 8(a)(4)'s protective reach)

6090-5000 Organizing protest regarding working conditions

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(Ee's encouraging other Ees during nonworking time to engage in walkout if Ees were required to work beyond 6 p.m. without being provided a meal held protected concerted activity)

6090-5400 Opposition to union hierarchy

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(member criticizing administration of U official, protected, notwithstanding member had not declared his candidacy to oust official)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(attempts to restrict hiring hall referrals to non-pensioners)

Master Painting & Sheeting, Inc. **JD-(SF)-119-80**

6090-5400—Cont.

(Ees who protested about E's practice of having same Ee be both U steward and foreman engaged in protected concerted activity as possibility of conflict of interest directly related to their conditions of employment)

6090-5900 Organizing protest regarding change in working conditions

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**

(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

6090-6300 Discussion filing or presentation of grievances

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**

(E's exception to ALJ's reliance on previous disciplinary warnings as evidence of animosity that E held toward U steward and his U activities, overruled; steward's activities were good faith attempts to process grievances, and alleged violations by him of grievance procedure were, at most, technical and were not so clearly transgressions as to remove grievance activity from protection of Act; moreover, steward's good faith is shown by fact that his use of working time to conduct U business other than processing grievances ceased once arbitrator ruled that such activity violated contract)

Omark-RCBS, A Division of Omark Industries **252 NLRB No. 089**

(E's statements requesting Ees to deal directly with management, asking for complaints or gripes and requesting opportunity to resolve problems, held violative since they constituted clear attempt to dissuade Ees from supporting U by soliciting grievances and holding out possbility of more favorable treatment)

Ford Motor Company **251 NLRB No. 066**

(Ees who file grievances, civil suits, or ULP charges in protest of E's promotional policies to supervisory positions, protected)

Hawthorne Mazda, Inc. **251 NLRB No. 038**

(Ee held engaged in protected concerted activity where he had been instrumental in securing fellow Ees' support in form of ptn for confronting E's management with their concerns regarding, pay, scheduling, and lack of a changing room; in securing meeting at which concerns could be addressed; and in presenting concerns to management in a way that conveyed their group nature, with Ee acting as spokesman for Ees in communicating with management which knew he was acting in that capacity)

United States Postal Service **250 NLRB No. 002**

(assuming U steward uttered obscenity toward supervisor in course of formally investigating possible grievance over working conditions on behalf of unit Ee when supervisor failed to ans steward immediately and directly, such utterance was part of *res gestae* of investigation and was not so flagrant or egregious as to remove protection of Act)

Colonial Stores Incorporated **248 NLRB No. 142**

(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights.* Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Lane Trenching, Inc. **247 NLRB No. 183**

(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

St. Regis Paper Company **247 NLRB No. 105**

(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

St. Regis Paper Company **247 NLRB No. 105**

(transferring work from one of E's plants to another of E's plants in another city to eliminate overtime, subject of an Ees' grievance, held violative, since grievance was protected activity)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**

(Ees voluntarily attending meeting with management on own time to discuss working conditions, or refraining from attending, protected)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**

(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

6090-6600 Dealing with public agencies regulating working conditions

United Services For The Handicapped **251 NLRB No. 117**

(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

Frank Briscoe Incorporated **247 NLRB No. 006**

(contention that laid-off black Ees who filed EEOC charges engaged in protected concerted activity only with respect to other black Ees in laid-off group because black Ees could only succeed with EEOC at expense of white Ees in group, rejected; action by Ee group to vindicate right against discrimination constitutes protected concerted activity on behalf of all Ees)

Shuttle Motor Corporation **JD-327-80**

(Ee's inquiry of state agency regarding legality of *back-stubbing* i.e., E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not concerted, where *back-stubbing* was not matter of common C among Ees; further, Ee called agency before any adverse action taken against him and subsequent *back-stubbing against him rectified*)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**

(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

6090-7000 Prosecution of FLSA claims

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**

(Ee engaged in protected concerted activity when he pressed his claim for travel pay and refused to cooperate with E in its attempt to defend against claims made by Wage and Hour Division of U.S. Department of Labor)

6090-7700 Prosecution of civil suit

Ford Motor Company **251 NLRB No. 066**

(Ees who file grievances, civil suits, or ULP charges in protest of E's promotional policies to supervisory positions, protected)

6090-8000 Filing, or threatening to file claims with government agencies

O. B. Williams Company **252 NLRB No. 146**

(soliciting withdrawal of charges filed by Ees with State Human Rights Department and threatening job security of Ee if he didn't withdraw charge, unlawful)

United Services For The Handicapped **251 NLRB No. 117**

(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Stafford Construction Co. **250 NLRB No. 128**

(discharge of Ee who threatened to file charges with mine safety agency violative)

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 150**

(Ee's filing of claim with state agency held concerted as well as protected activity even if Ee had acted as individual in so doing; here, however, he had also discussed the matter and gone to state office to file claim with other Ees acting in concert with him to seek *mutual aid* and agency's *protection*; moreover E was aware of concerted nature of Ee's conduct)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

Roadway Express, Inc. **JD-281-80**

(with Department of Transportation; protected)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**

(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to

6090-8000—Cont.

whether E knew of other Ee's involvement and that activity in question was concerted)

6090-9300 Refusing to perform job assignment

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(Ees protest to E about working along side Ee with suspected health problem protected activity)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(refusal of Ees to perform job assignment for safety reasons)

Leo G. Kohls v. N.L.R.B. **629 F.2d 173 (C.A.D.C., 1980)**
(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

6095 OTHER FORMS OF ACTIVITY UNPROTECTED

6095-6000 Seeking assistance of counsel at investigatory or disciplinary interview

Sentry Investigation Corp. **249 NLRB No. 130**
(*Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics*)

8000 INDEPENDENT ACTIVITIES OF EMPLOYEES REPRESENTED BY RECOGNIZED UNION

8025 TYPES OF ACTIVITY

8025-5000 Protest not an attempt to engage in direct negotiations

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**
(Ee labor organization's posting on bulletin board of notices seeking to continue its solicitation of Ees' grievances so as to continue negotiating with E over grievances which should have been processed through contractual grievance procedure held unprotected, since posting was in continued derogation of certified U which was Ees' lawful representative)

8067 OBJECTIVES OF ACTIVITIES IN RELATION TO REPRESENTATIVES POSITION

8067-5000 Inconsistent with representatives position

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(Ees' conduct in circulating ptn, addressed to question of what type of insurance coverage Ees should be demanding during contract negotiations, which conduct sought to undermine U's declared bargaining goals regarding insurance coverage, held protected concerted activity)

9000 REFRAINING FROM PROTECTED ACTIVITY

512 EMPLOYER INTERFERENCE WITH EMPLOYEE SECTION 7 RIGHTS (8(a)(1))

0100 GENERALLY

0125 INDIVIDUALS AFFECTED

0125-1400 Former employees

Schlegel Oklahoma, Inc. **250 NLRB No. 012**
(discharged Ee found statutory Ee for purposes of finding threat against him and other Ee unlawful)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(refusal to rehire discharged Ee not violative of Sec. 8(a)(1) as Sec. 8(a)(1) deals with Ee rights and applicant no longer Ee)

0125-1600 Employees of person other than respondent

Monongahela Steel Corporation **JD-392-80**
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

0125-6700 Probationary employees

Bucyrus-Erie Company **247 NLRB No. 059**
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

0125-7500 Supervisors

Times Herald Printing Company **252 NLRB No. 043**
(discharge of supervisory Ees for engaging in U activities not violative where discharges in no way affected other Ees' rights)

B. E. & K., Inc. **252 NLRB No. 036**
(interrogation of supervisors concerning their or others' U membership desires, or activities, not unlawful)

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(discharge of supervisor solely for that supervisor's own U activities does not contravene...Act)

0125-8700 Relatives of employees

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

0133 ISOLATED ACTS

Douglas & Lomason Company **253 NLRB No. 039**
(E's violations not isolated, or *de minimis* since E's actions were reasonably calculated to coerce Ees in exercise of their Section 7 rights)

Brooks Cameras, Inc. **250 NLRB No. 116**
(interrogation which, although addressed to single Ee, concerned all Ees in unit and sought information that could be used to discourage or prevent unionization of these Ees found neither isolated nor minimal)

Byrne Sand & Gravel Co., Inc. **JD-314-80**
(supervisor asking Ee *what's this I hear about U*, not unlawful, where isolated incident and absent U animus)

0142 DE MINIMIS VIOLATIONS

Douglas & Lomason Company **253 NLRB No. 039**
(E's violations not isolated, or *de minimis* since E's actions were reasonably calculated to coerce Ees in exercise of their Section 7 rights)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

Brooks Cameras, Inc. **250 NLRB No. 116**
(interrogation which, although addressed to single Ee, concerned all Ees in unit and sought information that could be used to discourage or prevent unionization of these Ees found neither isolated nor minimal)

0150 ACTS OR STATEMENTS NEUTRALIZING COERCIVE EFFECT OF PREJUDICIAL CONDUCT

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

0150-5000 Neutralizing effect not attained

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement that he could no longer support Ee's application for management position because of Ee's U activities unlawful, notwithstanding supervisor's later repudiation of remarks)

Sani-Serv, Division of Catalox Corporation **252 NLRB No. 186**
(E's rescission of unlawful no solicitation rules does not preclude finding of violation where Ees were not effectively notified of rescission)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(supervisor asking Ee what she thought of speech in opposition to U by E's president, unlawful, since question necessarily constituted attempt to ascertain Ee's feelings about U and had coercive effect where supervisor had previously interrogated Ee)

0167 ATTITUDE OR MOTIVE OF EMPLOYER

CTS Keene, Inc. **247 NLRB No. 141**
(E's intent not material to finding that its interrogation of Ee violated 8(a)(1))

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(in same way that E, unmotivated by intent to discourage U membership, may make decisions having foreseeable effect of discouraging U membership, so also may U make decisions reasonably calculated to further welfare of all Ees it represents, non-U as well as U, even though foreseeable result of decision may be to encourage U membership)

0167-3300 Neutral attitude

Central Freight Lines, Inc. **250 NLRB No. 063**
(terminal manager's telling leadman not to participate in U activities and to remain neutral)

0167-6700 Antiunion attitude

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

Permanent Label Corporation **248 NLRB No. 021**
(where most of E's anti-U activity occurred after violative discharge of 2 U adherents, this activity can be used to support finding of E's anti-U attitude immediately prior to discharge)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(anti-U animus may be shown by conduct that does not violate Sec. 8(a)(1))

Jack Horton d/b/a Horton Construction Company **JD-797-79**
(layoff motivated by Ees U activity violative, and showing of onimous independent of layoff itself is not essential element in finding discrimination)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

0167-8300 Motive

Chester Valley, Inc. **251 NLRB No. 190**
(neither E intent not to threaten Ees nor absence of Ee coercion in reaction to E's threats render threats lawful, since test of interference and coercion under 8(a)(1) does not depend on E's motive nor on successful effects of coercion; rather, legality is determined by whether conduct may reasonably be said to have tendency to interfere with exercise of Ee rights under Act)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(motive or whether coercion succeeded or failed immaterial to prove violation of Sec. 8(a)(1); test is whether E has engaged in conduct which reasonably tends to interfere with free exercise of Ee rights under Act)

Permanent Label Corporation **248 NLRB No. 021**
(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

0183 INDIRECT INTERFERENCE

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(Bd's statement made in Fedelity Telephone that *A respondent is responsible only for the remarks it makes to Ees and not for the impressions that Ees may derive from remarks* was not intended to license interference with Ees' rights by use of subtlety, innuendo, and inference, prohibiting only blunt and categorical acts of restraint and coercion)

5000 FORMS OF EMPLOYER CONDUCT

5006 STATEMENTS BY EMPLOYER

5006-1700 Coercive character question of fact for Board

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(cts should defer to Bd expertise, particularly where Ees may be especially sensitive to implied threats)

5006-1733 Inherently harmless statements may become coercive as part of course of conduct

St. Francis Hospital **249 NLRB No. 017**
(E's statement that if U won election it would refuse U demands, causing U to strike and Ees to lose jobs would not be violative standing alone but in context of E's other anti-U statements showing inevitability of strike and job loss it is violative)

Werth Engineering, Inc. **JD-295-80**
(questioning of Ee by E about his U activities is inherently coercive and fact that supervisor and Ee are personal friends is immaterial)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(in assessing E's activity alleged to constitute unlawful restraint or coercion, relevant inquiry is not limited to examining ostensible meaning or likely impact on Ees of E's statement; scope of inquiry must encompass entire pattern of E conduct)

5006-1767 Must be considered in connection with surrounding circumstances

Stewart-Warner Corporation **253 NLRB No. 016**
(foreman's threat to discharge Ee because of his participation in U activity violative, not withstanding foreman and Ee were friends as impact of statement is probably greater in view of source)

Marine World USA **251 NLRB No. 161**
(where ct found E's announcements to Ees concerning withholding of wage increase and comments about incumbent U contained no express threat of reprisal or force or promise of benefit and remanded case to Bd for consideration of whether threat of reprisal or force or promise of benefit can be inferred from surrounding circumstances, Bd held that although E's statements were critical of U, threat of reprisal or force or promise of benefit cannot be inferred from the circumstances and concluded, under ct's analysis, announcements were not violative)

Blue Bird Body Company **251 NLRB No. 196**
(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

The Nestle Company **248 NLRB No. 106**
(foreman's statements to U adherent that Ee's U was *a loser, -- no good and bunch of crooks,* held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

Giuliem Apparel Corp. **JD-162-80**
(E president's statement to Ees that he didn't think U would do Ees any good, that nobody would shove contract down his throat, and that he was only boss, not unlawful, where E president expressed willingness to sign contract with U and his remarks about benefit to Ees of contract reflected expression of opinion about how little benefit this would be to Ees rather than message of futility)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(supervisor's asking Ee shortly before election about U's prospects and *who do you think will win election,* and E president's asking another Ee if he had written letter critical of E officials, violative, in view company hostility toward U that was clearly manifested to Ees)

5006-3300 Coercive effect of statements

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(Bd held supervisor's stating to Ee that, in his opinion, E had planned to open new weaving process in named town, but *because of what had happened, they didn't think that they would* held unlawful and declined to consider opinion nature of supervisor's statement or his status as low-level supervisor to be conclusive, since Ees can reasonably assume that supervisor is privy to decisions of E's management, supervisor's comment *because of what has happened* can be reasonably construed as referring to U election or campaign, and the remark was made in course of extensive unlawful activity by E)

Marine World USA **251 NLRB No. 161**
(where ct found E's announcements to Ees concerning withholding of wage increase and comments about incumbent U contained no express threat of reprisal or force or promise of benefit and remanded case to Bd for consideration of whether threat of reprisal or force or promise of benefit can be inferred from surrounding circumstances, Bd held that although E's statements were critical of U, threat of reprisal or force or promise of benefit cannot be inferred from the circumstances and concluded, under ct's analysis, announcements were not violative)

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**
(E's statement to Ee that it would be wise to wait until U was certified before he joined not violative as protected statement of opinion)

Chester Valley, Inc. **251 NLRB No. 190**
(neither E intent not to threaten Ees nor absence of Ee coercion in reaction to E's threats render threats lawful, since test of interference and coercion under 8(a)(1) does not depend on E's motive nor on successful effects of coercion; rather, legality is determined by whether conduct may reasonably be said to have tendency to interfere with exercise of Ee rights under Act)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(statement to job inspector that she was lying about U adherent's job production count, that matter was serious and that she had better brush up her story, unlawful, since it restrained inspector in her protected right and obligation to give testimony under Act)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(Ees' subjective response to threat of job loss by E is irrelevant as objective basis is used to determine if E's statement violates Act)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(supervisor's statement to Ees that supervisors would be fired for allowing U to come in, violative)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(foreman's action in throwing U grievance in trash container with comment, *this is what I think of your damn U* unlawful)

The Nestle Company **248 NLRB No. 106**
(foreman's statements to U adherent that Ee's U was *a loser, -- no good and bunch of crooks,* held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

Highland Foods, Inc. and Vickelda Industrial Corporation **JD-364-80**
(announced isolation of Ee who was attempting to organize Ees, violative)

Consumer Enterprises, Inc. **JD-342-80**
(remarks to Spanish-speaking Ees blaming Ees' U activity or their signing of U cards for U.S. Immigration and Naturalization Services raid at E's plant in search of illegal immigrants, violative)

Giuliem Apparel Corp. **JD-162-80**
(E president's statement to Ee that heads would roll if he found out who was behind U, unlawful)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(E's statement to Ee that he knew some of the Ees wanted to be represented by U and that *he was going to go that way any way,* not unlawful, where E's brief statement took place after Ees executed U cards and was not calculated to elicit information or create impression of surveillance)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
, (test of coercion is not whether misconduct proves effective, but whether under circumstances existing it may reasonably tend to coerce Ees)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**

5006-3300—Cont.

(superintendent's inquiry to Ee about contacting U, not unlawful, since it lacked coercive effect and was an honest corroborating repetition of Ee's own U business agent's volunteered information to superintendent)

5006-5000 Kinds of statements

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(supervisor's statement to disciplined Ee that if Ee had kept his mouth shut at disciplinary hearing, discipline would not have been imposed, not unlawful, where supervisor did not initiate conversation but only responded to comment made by Ee, whole exchange totaled only 2 minutes, remark was not made in hostile or vindictive tone, and Ee's conduct at hearing made remark not inappropriate)

5006-5010 Antiunion statements, generally

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's statements that unionization would subject Ees to *grave risk* and that E would respond to selection of U by action that would jeopardize Ees' livelihood, unlawful, even though E, from time to time, asserted that it would bargain in good faith, that it intended no reprisals, and attempted to cite consequences of unionization as results that *could* happen)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's statement to Ee that *maybe all this wouldn't have been happening* if Ees had not tried to get U in, unlawful, since Ee could reasonably interpret statement as reference to his discharge and discharge and discipline of other Ees during U campaign)

Central Freight Lines, Inc. **250 NLRB No. 063**
(terminal manager's telling leadman not to participate in U activities and to remain neutral)

5006-5015 That employer would refuse to bargain with union

B. E. & K., Inc. **252 NLRB No. 036**
(alleged statement by E to Ees that E would not negotiate with U as to any wage increases, herein asserted to be a threat of futility, not unlawful, where Ees' testimony to that effect constituted a conclusion of what E had said rather than an accurate recollection of what had been said, and E's denial of making statement was credited)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(E's owner stating to Ees that she would never negotiate with U if it came into plant, violative)

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**
(threatening Ee that E would refuse to negotiate with U if it prevailed in decertification election, unlawful)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(statement that E would not give unionized Ees more benefits than unrecognized Ees violative as it showed E had no intention of bargaining with U and would violate Section 8(a)(5))

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

Fotomat Corporation **248 NLRB No. 150**

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Mather Federal Credit Union **JD-(SF)-8-80**
(telling Ees that contract with U would not be signed)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(E's announcement of its intention to go *open shop* simultaneously with its repudiation of obligation to pay contractual benefits held message that E would not recognize and bargain with U, rather than statement, as contended, that E would abide by State *right to work* law)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(E's actions including speech in which E described what happens in negotiations held not threat of sham bargaining)

5006-5020 Attacks upon union or officials, particular forms of

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**
(foreman's remarks to Ee criticizing U steward, violative)

5006-5020-3300 Disparagement generally

Reeves Rubber, Inc. **252 NLRB No. 026**
(disparaging need of Ees for U and urging them to vote U out, all in context of statements asserting that Ees had forfeited pay increases and benefits which would have accrued to them had they not selected U, violative)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(payroll supervisor's response to U steward's request for his paycheck, to effect that ----*you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor reading to each Ee individually its decertification memo for purpose of disparaging U, unlawful)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(no violation, where in response to Ee's inquiry as to basis for E's statements in support of its decertification ptn E's personnel director informed Ee U was not reputable and asked Ee *why Ees needed U when E gave them benefits anyway* since Ee initiated conversation and question was rhetorical)

5006-5020-6700 Characterization as

5006-5020-6733 Reds, radicals, Communists, fascists, or un-Americans

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E's warning to Ee 2 weeks after U lost election to stay away from *radicals* violative as both understood E to mean U supporters)

5006-5020-6767 Corrupt

The Nestle Company **248 NLRB No. 106**
(foreman's statements to U adherent that Ee's U was *a loser, -- no good and bunch of crooks*, held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

5006-5025 Disparagement of employees

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E unlawfully threatened Ee by telling him that Ee was lowdown for not telling E about fellow Ees' U activities and Ee was therefore traitor, costing E money)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(statement by E that U steward was troublemaker and E was having problems in department which could reasonably be interpreted by U officials to mean that E's problem was overzealous steward who filed too many grievances and solution to problem was transfer of steward, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(holding some members of U committee up to ridicule and scorn in front of assembled Ees and referring to them as *jokers and clowns* violative)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(calling suspected U adherent derogatory names prior to election, violative, since action discouraged Ee participation in U activities)

Redman Construction Company, Inc. **JD-(SF)-105-80**
(E's referral to violatively discharged Ee who had attempted to implement terms of contract as *troublemaker, rabble-rouser and/or instigator* in conversation with other Ees violative)

5006-5026 Union supporter should quit

High Performance Tube, Inc. **251 NLRB No. 181**

5006-5027 Union supporter should be segregated

Smith Auto Service, Inc. **252 NLRB No. 068**
(telling Ee to *stay clear* of another Ee because of the latter's membership in and activities on behalf of U, violative)

Smith Auto Service, Inc. **252 NLRB No. 068**
(violation where E president told prospective Ee not to associate with known U adherent and his stepson because they were *troublemakers* and U adherent was *instigator*)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(warning Ees not to associate with U adherents, unlawful)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(telling Ee not to associate with U adherent, unlawful)

5006-5030 Union adherence or other protected activity as employee disaffection or disloyalty toward employer

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

Peavey Company **249 NLRB No. 110**
(E's vice president informing Ee that Ees that started U might be considered disloyal and that disloyal Ees do not move up, unlawful, notwithstanding Ee admitted she thought vice president was speaking of companies in general, where Ee was asked to inform other Ees of vice president's thoughts)

Ahstabula Forge, A Division of ABS Industries, Inc. **JD-388-80**
(industrial relations manager informing Ee that he would not have been hired if E had known he was son of U president, unlawful)

5006-5030—Cont.

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(inquiry by guard at plant gate of Ees displaying sign in their vehicle, urging boycott of E's product, whether they were sympathetic to striking Ees and stating that if they were they shouldn't be working for E, unlawful)

5006-5031 Employment reference

National Steel Products **252 NLRB No. 120**

5006-5033 Opposition to enhancement of union status

Blue Bird Body Company **251 NLRB No. 196**
(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

5006-5036 Threatening to report employees to immgration authorities, IRS or other government agencies

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(owner of restaurant informing waitress that he did not like her going to government agency alleging E was violating law by not paying for upkeep of uniforms and reminding her that tax law required that Ees declare all their tips, unlawful, since this conveyed threat to report Ee to IRS if she persisted in protected activity; owner's response to question that he was not demanding she declare all her tips not sufficient to dispel threatening character of remark)

Lika Corporation **JD-(SF)-69-80**
(warning that Mexican nationals would be sent back to Mexico if U came in is implied threat of discharge)

5006-5037 Advising employee on procedure for withdrawal from or decertification of union

Tartan Marine Company **247 NLRB No. 073**
(E's posting notice informing Ees they *had an absolute and moral right to cancel their U cards and have them returned* and that if they desired to get their cards back, they should write letter to U with a copy to Bd asking that their cards be cancelled and returned to them and providing Us and Bd's addresses, not unlawful, where Ees had requested information; however, supervisor calling Ee's attention to notice, after Ee expressd desire to attend company meetings, violative)

5006-5040 Proposal of or statement of preference for inside union

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's request that Ee support incumbent U officials in upcoming U election, made half-year before election, and unaccompanied by any kinds of threats or promises held not to violate 8(a)(2) nor 8(a)(1))

5006-5042 Telling employees they would not be discharged for not joining union despite existence of union-security clause

Regal Shoe Shops #2421 & 2340 **249 NLRB No. 179**
(E's announcement to striker replacement that it would protect him if he chose not to join U even if there was U-security clause in contract to be executed, violative, as such promise has tendency to discourage replacement from joining or supporting U)

5006-5043 Informing employee that nonunion involvement was reason for not being disciplined

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(E's statement to Ee that she would not have been recalled after her discharge if he had not learned that she did not give another Ee U card, violative)

5006-5044 Informing employee that protected activity was reason for denial of promotion

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement that he could no longer support Ee's application for management position because of Ee's U activities unlawful, notwithstanding supervisor's later repudiation of remarks)

Coating Products, Inc. **251 NLRB No. 170**

Ford Motor Company **251 NLRB No. 066**
(supervisor's statement to Ees who filed grievances, contemplated civil suits and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

5006-5045 Informing employee that protected activity was reason for discharge or suspension

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(statement that Ees were discharged for soliciting on premises when no valid no-solicitation rule was in effect, unlawful)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(where Ee had conversation with supervisor during which Ee remarked that she had heard that supervisor *had lost an operator due to union activity or soliciting for the union,* and supervisor answered affirmatively, identified the operator, and explained that she was not discharged for *following another person to their job, talking to them about the union.* Bd held supervisor's comments unlawful; the comments implied that operator's U activity was related to her discharge)

Comgeneral Corporation **251 NLRB No. 069**
(statements to several Ees immediately following mass discharge and layoffs that individuals in question were terminated because they were U adherents violative)

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(informing Ees that they had been discharged for participation in lawful economic strike, unlawful)

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(E's telling Ees that another Ee was fired because of his U activities, unlawful)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(notifying Ees that they had been suspended for attending U meeting, unlawful)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(telling Ees their discharges had been caused by their U activities and U activities of U ringleaders, unlawful)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(informing Ee that coworkers have been discharged for their U activity)

North State Supply Co., Inc. **247 NLRB No. 181**
(E's statement to Ee that another Ee had been discharged for trying to start U, violative as threat that other Ees would be discharged if engaged in U activity)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(E's statement two weeks prior to election that Ee had been discharged for joining U violative; fact that this might not be true immaterial)

Production Plated Plastics, Inc. **247 NLRB No. 076**

RMX, Inc. **JD-583-80**
(conveying to Ees that Ee was discharged for U activities, unlawful)

Retail Delivery Service, Inc., and Robert A. Baime, Esq. **JD-486-80**
(informing Ee that his stated intention to complain to U and Bd was reason for discharge, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(comment to U official in presence of other Ees blaming U for Ee's termination, violative)

Falconer and Sons **JD-(SF)-232-80**
(E's statement at meeting that shop steward was discharged because he was *just too involved in his union activities,* unlawful)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(informing strikers that they had lost their status as Ees because their positions had been filled during the strike, unlawful)

5006-5046 Informing employees that wages or benefits could not be increased because of union campaign or objections

Centre Engineering, Inc. **253 NLRB No. 028**
(E's statement that it could not give raise because of U campaign violative where E was blaming U for its inability to give raise and it made no assurances that raise would be given after U campaign or made retroactive)

Douglas & Lomason Company **253 NLRB No. 039**
(informing Ees that they would have received more or higher wage increases and more paid holidays, if not for presence of U, unlawful)

G. F. Business Equipment, Inc. **252 NLRB No. 123**

Cable Vision, Inc. **249 NLRB No. 062**

Conagra, Inc. **248 NLRB No. 085**

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(informing Ees that E had *discontinued efforts to obtain group health insurances—as a result of commencement of the U organizing campaign* not unlawful where GC failed to prove E had denied Ees any benefits)

5006-5046—Cont.

Permanent Label Corporation **248 NLRB No. 021**
(E's recitation of *no promises* formula or statement that it was precluded from making commitments, does not cancel inferences that grievances solicited in pre-election context would be corrected)

Service Garage, Inc. **247 NLRB No. 115**
(violation where E made statement that Ees would receive 7 percent pay raise and then later told them they would not receive raise because of Ees' U activities)

Texas Industrial Services **JD-(SF)-180-80**

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(E informing Ee on advice of counsel he could not give Ee wage increase in view of U activity, not unlawful, since recission was correction of error in offering unlawful increase)

Mather Federal Credit Union **JD-(SF)-8-80**

Southside Electric Cooperative, Inc. **JD-800-79**
(falsely attributing rescission of wage increase to U held violative as effort to undermine U's standing among Ees)

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**

5006-5047 Informing employee or union that protected activity was reason for layoff

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(advising Ee that layoff was to get rid of people organizing for U, unlawful)

East Wind Enterprises **250 NLRB No. 101**

Hall of Mississippi, Inc. **249 NLRB No. 119**
(telling Ees that they were being laid off because of their U activities and implying that E would transfer work from local plant to another plant, violative)

5006-5048 Informing employee that protected activity was reason for less favorable treatment

Woonsocket Spinning Company **252 NLRB No. 163**
(telling Ee he might have received bonus if he had not voted for U)

Pacific Intermountain Express **250 NLRB No. 180**
(violation where E removed customer accounts from Ee and told other Ees that it had done so because of customer's demand that U sales representatives not service them)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(E agent's telling Ees that *they was pissed because of the Union,* violative where the statement was given in response to Ee question as to why E unilaterally changed working hours of Ees)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that he knew E was cutting hours of Ees so they would be unable to support their families, would *have to quit and the union thing would go down the drain,* violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**

5006-5049 Informing employee that protected activity was reason for refusal to hire, reinstate or re-employ

Stafford Construction Co. **250 NLRB No. 128**
(telling prospective Ees that employment was conditioned on withdrawal from U)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(telling applicant he would not be hired because he was honoring U picket line at another retail store held violative)

5006-5050 Misleading or distorted explanation of Act

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(violation by misstating law by implying that Ees, in order to retain jobs if U wins, would have to pay U fines, assessments and have dues checkoff, in view of these statements being made in context of repeated unlawful threats and statement that victory for U would destroy job security)

Peat Manufacturing Company **251 NLRB No. 153**
(telling economic strikers that *they were not going to get their jobs back,* violative, since they were entitled their jobs once strike had ended, they applied for reinstatement and openings for which they were qualified became available)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**
(threatening Ees with loss of access to management if U became Ees' representative, unlawful, where E conveyed message to Ees by letter on day before election that if U represented Ees, Ees could not deal directly with E and E would be legally obligated to deal solely through U regarding all aspects of Ees' terms of employment; E thereby misstated Ees' statutory rights under Sec. 9(a))

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(telling Ees that if U won election there would be no automatic wage increases or other benefits, but that wages and benefits would be frozen by law while negotiations are going on between E and U, often times for many months, violative)

5006-5053 Futile to join or choose union

GE's Trucking, Inc. **252 NLRB No. 131**
(E, operating trucking company engaged solely in distributing another E's product, who stated to his own Ee that distributor would fire them all if they started U, unlawful either as threat of discharge or as statement that selection of U would be futile; distributor was in position to affect E's business for better or for worse, and Ee might reasonably assume that E would know, better than Ee, what action their mutual livelihood would take in event of unionization)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(letter gives guarantee that U will never get signed contract and other themes indicate futility)

B. E. & K., Inc. **252 NLRB No. 036**
(alleged statement by E to Ees that E would not negotiate with U as to any wage increases, herein asserted to be a threat of futility, not unlawful, where Ees' testimony to that effect constituted a conclusion of what E had said rather than an accurate recollection of what had been said, and E's denial of making statement was credited)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(supervisor's statement that *there was no way* E *would sign contract with* U, unlawful)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(violation where E threatened Ees that their support of Us would be futile since E would never sign contract and would terminate or permanently replace any Ees who went on strike for contract)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(E's statement that Ees at nonU plant would receive all benefits that Ees at U plant would receive, violative as itindicated that U representation would be futile because it would not result in improvement of working conditions)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat made in meeting with U business agent and overheard by Ee to effect that Ees could join U but U would have to work them, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(informing Ee who had been soliciting for U that if U came in company *would buy out committee and she would be hurting,* unlawful threat)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(E's statements that it would never capitulate to U's representative status and that Ee would only lose because U dues would make his salary lower, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that E was determined to oppose U and will not bargain for more favorable working conditions, leading Ees to understand that selecting U would be futile, unlawful)

Thermo King Corporation **247 NLRB No. 04**
(preelection speech to Ees in which E stated *you will gain absolutely nothing* by U representation, not unlawful, where speech was compilation of factual material in combination with review of organizing campaign, E outlined benefits already enjoyed by Ees which, if traded for U representation, will only bring Ees anger, misery, and frustration and presented economic problems which could arise if E could not meet U demands, thereby merely engaging in speculation concerning possible consequences beyond E's control)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**

5006-5053—Cont.

(E's response to Ees' questions that, if Ees voted in U, E must negotiate in good faith but did not have to sign contract if unable to agree to its terms, not coercive and not unlawful or statement that electing U would be futile since E would not negotiate contract, as alleged, but rather was correct statement of E's legal obligation)

Giuliem Apparel Corp. **JD-162-80**
(E president's statement to Ees that he didn't think U would do Ees any good, that nobody would shove contract down his throat, and that he was only boss, not unlawful, where E president expressed willingness to sign contract with U and his remarks about benefit to Ees of contract reflected expression of opinion about how little benefit this would be to Ees rather than message of futility)

5006-5055 Employees will have to bargain from scratch if union is selected

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(supervisor's remarks during break, in response to Ee's question, that when a U comes in you bargain from minimum wage up and there are no benefits until contract signed, violative as remarks were threat of loss of existing benefits)

Conagra, Inc. **248 NLRB No. 085**

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Liberty Vinyl Corporation **JD-(SF)-268-80**
(pamphlet distributed by labor consultant during U campaign stating that negotiations start from scratch held not violative, as it is truthful and unobjectionable for E to point out that contract negotiations involve tradeoffs and no benefits are exempt from bargaining process that E must engage in good faith)

South Suburban Hospital **JD-(SF)-278-80**
(in noncoercive manner and circumstances E can state that all benefits and wages will be renegotiated if U wins; not quite same as *bargain from scratch*)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

5006-5058 Statements concerning bargaining position

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E informed an Ee that it was determined not to have U in the plant and intended to stall negotiations)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(statement that E would not give unionized Ees more benefits than unrecognized Ees violative as it showed E had no intention of bargaining with U and would violate Section 8(a)(5))

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(misrepresentation of the nature of E-U negotiations by asserting that only issue separating parties was open shop issue, unlawful)

Liberty Vinyl Corporation **JD-(SF)-268-80**
(pamphlet stating that present salaries, benefits and working conditions are up for grabs and subject to negotiations held not violative where labor relations consultant who distributed them made spoken remarks which dissipated misapprehension about status of existing benefits and wages if U got in)

5006-5059 Informing employee that protected activity was reason for denial or offer of employment

Central Transport, Inc. **253 NLRB No. 130**
(statements by E's vice-president to applicant who had been involved in intra-U rivalry that if after applicant was hired local U requested applicant's discharge E's owner would direct vice-president to discharge applicant, not unlawful, since no threat made and statements were in response to applicant's negative attitude; vice-president had earlier suggested applicant commence working while member of another local; further, applicant refused vice-president's offer to be calm and give it a try made after allegedly improper remarks)

Central Transport, Inc. **247 NLRB No. 198**
(E's statements during initial employment interview that E maintained policy of not hiring Ees with history of employment with organized Es, violative)

5006-5060 No benefits from, or need for, union

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(E's statement that Ees at nonU plant would receive all benefits that Ees at U plant would receive, violative as itindicated that U representation would be futile because it would not result in improvement of working conditions)

Conagra, Inc. **248 NLRB No. 085**
(statement that E offers same benefits as U *for nothing*, violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(no violation, where in response to Ee's inquiry as to basis for E's statements in support of its decertification ptn E's personnel director informed Ee U was not reputable and asked Ee *why Ees needed U when E gave them benefits anyway* since Ee initiated conversation and question was rhetorical)

Thermo King Corporation **247 NLRB No. 048**
(preelection speech to Ees in which E stated *you will gain absolutely nothing* by U representation, not unlawful, where speech was compilation of factual material in combination with review of organizing campaign, E outlined benefits already enjoyed by Ees which, if traded for U representation, will only bring Ees anger, misery, and frustration and presented economic problems which could arise if E could not meet U demands, thereby merely engaging in speculation concerning possible consequences beyond E's control)

Cashmere Lumber Company **JD-(SF)-93-80**
(although supervisor's conduct would have been unlawful in organizational setting, his asking Ee why he sought to involve official of parent organization in U's problems at plant, accompanied by statements that Ees did not need U as long as he held his management job and that he would *take care of Ees*, not unlawful, notwithstanding supervisor's *take-care-of* statement since, in context of settled bargaining relationship with U, there was nothing in supervisor's remarks or surrounding circumstances from which Ee could have perceived a threat or promise)

5006-5062 Informing employees that protected activity was reason for cancellation of plant expansion plans

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(Bd held supervisor's stating to Ee that, in his opinion, E had planned to open new weaving process in named town, but *because of what had happened, they didn't think that they would* held unlawful and declined to consider opinion nature of supervisor's statement or his status as low-level supervisor to be conclusive, since Ees can reasonably assume that supervisor is privy to decisions of E's management, supervisor's comment *because of what has happened* can be reasonably construed as referring to U election or campaign, and the remark was made in course of extensive unlawful activity by E)

5006-5063 Advantages to be gained from not having union

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Keister Coal Company, Inc. **247 NLRB No. 049**
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

Keister Coal Company, Inc. **247 NLRB No. 049**
(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(E's suggestion that Ee would be better off by not joining U constitutes interference with Ee's freedom of choice for or against unionization and is unlawful)

5006-5065 Detrimental results of unionization

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(letters stating that U victory would destroy job security, result in strikes and job loss blinded with statements that rejection of U would remove all obstacles to job security and harmonious and beneficial employment relations, violative)

Behring International, Inc. **252 NLRB No. 055**

5006-5065—Cont.

(E, through Ees acting as its agents at Ee meeting, violated 8(a)(1) by making it clear to Ees that they would be better off w/o U)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

Lyman Steel Company **249 NLRB No. 040**
(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off,* held violative)

Permanent Label Corporation **248 NLRB No. 021**
(E's statement that if U came in he was not going to work as hard for the business violative)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(E's statements that it would never capitulate to U's representative status and that Ee would only lose because U dues would make his salary lower, violative)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(manager telling Ees that, *if U should get in,* they would be subject to various consequences, causing them to lose (work) hours, held violative)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that he knew E was cutting hours of Ees so they would be unable to support their families, would *have to quit and the union thing would go down the drain,* violative)

Tartan Marine Company **247 NLRB No. 073**
(supervisor showing Ee clipping about discharge of individual for not attending U meetings on Sundays, and informing Ee that Ee and other Ees could be laid off before less capable Ees if U came in, unlawful, absent evidence U advocated seniority over capability)

Keister Coal Company, Inc. **247 NLRB No. 049**
(E's speech to assembly of all his Ees during U campaign that *unionizing this company at this time will create a hardship that will have an effect on all of us* held violative, since it constituted threat of economic adversity in event Ees joined or supported U)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(threatening Ees, that if U came in, U would cause commission of acts of violence, against which E could provide only partial protection, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(asking U supporter how she would feed her children on meager weekly strike benefits should U come into plant, unlawful, since it was part of pattern by management to impress Ees that if U came in a strike detrimental to their interests would inevitably occur)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E informed Ees in letter prior to election that if Ees selected U as representative E would have to spend time fighting U rather than obtaining orders and remaining competitive in industry, and consequently plant would close, at no point suggesting possibility of collective bargaining)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E in series of letters prior to election informed Ees that if they voted for U they would be *subjected to strikes and tactics that have faced other companies organized by U* leading Ees to believe that their choice was between no U and strike)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(supervisor's telling Ee, *In fact, E would go out of business if they had a union,* and if *...the union was voted in, that the mill would have to be shut down about a week to have negotiations,* violative, since remarks imply that E would unilaterally choose to close down its plant during negotiations)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(telling Ees that if U won election their affairs would then be in U's hands and they would no longer have right to speak for themselves in matters pertaining to their employment, violative)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(violation where E told Ees, in effect, that considerations over working conditions would become *a mechanical thing* if U won election and that E would no longer be able to guarantee Ees 40-hours a week, but only what was available)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(violation where E told Ees that its business was predicated on continuation of service or production and that during contract negotiation E would have no production and hence business would stop)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(telling Ees that with U they would no longer have informal atmosphere, that they would lose their freedom, and that decisions affecting their job would be made by others, violative)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(E's statement that if U came in *people would be in for a rude awakening and things would get tough around here,* violative)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(ct found substantial evidence to support Bd's finding of violation, where E's campaign speech and literature communicated to Ees message that unionization would threaten continued employment, job security, liberal overtime and future benefits)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(threat of loss of jobs if U came in, violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(informing Ee that if plant closed when U came in, E would have difficulty in getting another job with non-U E, violative)

5006-5067 Inevitability of strikes upon advent of union

Centre Engineering, Inc. **253 NLRB No. 028**
(E's campaign linking U with strikers, futility of bargaining and its intent to make negotiations difficult violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

Fotomat Corporation **248 NLRB No. 150**

Conagra, Inc. **248 NLRB No. 085**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that strike with its *trouble and tension* is inevitable and will be unsuccessful because of E's resistance to collective bargaining and that, as a result, strikers will suffer hardship and possibly lose thier jobs, unlawful)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E in series of letters prior to election informed Ees that if they voted for U they would be *subjected to strikes and tactics that have faced other companies organized by U* leading Ees to believe that their choice was between no U and strike)

Liberty Vinyl Corporation **JD-(SF)-268-80**

Lika Corporation **JD-(SF)-69-80**
(legitimate economic prediction that there could possibly be strike if U came in not violative)

5006-5075 Remove union insignia

Certain-Teed Insulation Company **251 NLRB No. 208**
(telling Ees that high level supervisor was *disappointed* in them for wearing caps and buttons with U insignia, violative, since such action implies that management wants Ees to cease wearing U insignia)

Carbonex Coal Company **248 NLRB No. 107**

Permanent Label Corporation **248 NLRB No. 021**

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

5006-5076 Informing employee that his position or catagory did not permit him to participate in union activities

Peavey Company **249 NLRB No. 110**
(E's vice president informing Ee that Ee was confidential Ee and could not participate in U activities, unlawful, notwithstanding contention vice president honestly believed Ee to be confidential Ee as E cannot restrict protected activities of *confidential*)

5006-5080 Expression of opposition to union or collective bargaining

Douglas & Lomason Company **253 NLRB No. 039**
(informing Ees of its intent to rid itself of U, unlawful)

Douglas & Lomason Company **253 NLRB No. 039**
(informing Ees of existence of ptn to oust U, unlawful)

Maywood, Inc. **251 NLRB No. 139**
(violation where supervisor told newly-hired Ee, while showing her where time clock was, *This department is not for union. We do not sign cards for the union*)

Climate Control Corporation **251 NLRB No. 102**
(threatening to extend negotiations and engage in appeals in order to defeat or delay bargaining with U, violative)

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(E's statement to Ee indicating that E would rather not recognize and bargain with U held unlawful expression of U animus)

C & G Coal Corporation **247 NLRB No. 179**
(telling Ee who asked if he could join U to ----*go on and not cause any more trouble*, held violative)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(*put a stop to this U business*)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(statement to Ee that Ees would have to go on strike to get U in at plant, unlawful as threat of reprisal, since statement was not based on objective fact and was obviously injected to raise fears of reprisal)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(statement to Ees that U activity interfered with managerial perogatives, unlawful)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's alleged statement to Ee prior to election that E would decline to enter into contract with U held not unlawful and not interference, where E had stated that, if U won, E would bargain with it because he was not opposed to unionization of plant, but he cautioned that he could not afford U's economic demands which would affect his corporate solvency)

Signode Corporation **JD-161-80**
(posting notice and letters to Ees as to why they should not sign U authorization cards not violative as failing w/i purview of views, argument, or opn; moreover documents contained no threats or promises)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(supervisor's telling Ees a week before election that E president had said that he would not sign contract with U and would *prefer to sell the company before signing any contract*, violative)

5006-5090 Preference for or opposition to one of competing unions or preference for another union

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Carbonex Coal Company **248 NLRB No. 107**
(E solicitation of Ee to talk to fellow Ees about forming *company U* violative)

5006-5092 Disclosure of card signers' identity to employer

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's warning Ees that it might learn identity of card signers in Bd or ct proceeding, coming in midst of U's card signing efforts, unlawful, since statement carried obvious implication that harm or retaliation would result from disclosure of identity of card signers to E)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's speech stating to Ees that E would learn at trial identity of U card signers, unlawful, where it had same impact as earlier speech inhibiting actual card signings themselves and also tended to interfere with Bd processes because it inhibited Ees from testifying freely about their protected activity)

Koh-I-Nor Rapidograph, Inc. **JD-(NY)-76-80**
(E's statement to Ees that U authorization cards might not be kept confidential not violative where E did not threaten Ees that there would be reprisals against Ees who signed cards)

5006-5095 Inhibiting utilization of grievance machinery

Southern California Gas Company **251 NLRB NO. 127**
(E's speech to Ees that before presenting grievances to U representatives they must go to their supervisors violative)

Southwestern Bell Telephone Company **251 NLRB No. 062**
(no violation, where at meeting of all supervisors and U stewards E made statements to the effect that stewards should deter or dissuade Ees from filing nonmeritorious or nuisance grievances and at no point stated that E would not accpet grievances of any nature, nor threatened stewards with reprisals should they not heed his instructions)

Southwestern Bell Telephone Company **251 NLRB No. 062**
(no violation, where E did not threaten Ee with *problems* of undisclosed nature in retaliation for Ee's implicit announcement that he intended to file grievance concerning disagreement he had with E; rather, E's reference to problems concerned Ee's propensity to disrupt work of other Ees, and E in no manner implied that problems would result from Ee's utilization of grievance procedure)

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not talk to individual Ees but only to shop stewards about grievances, unlawful as threat of more difficult working conditions)

St. Regis Paper Company **247 NLRB No. 105**
(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(statement to Ee who had filed grievance that she was nothing but a damn agitator and troublemaker, violative)

Albertson's Inc. **JD-(SF)-104-80**
(no violation, where E opined that Ee should have discussed problem with supervisor before filing grievance in view of long employment relationship and no reprimand or coercion on Ee)

5006-6700 Method employed in making statement

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(issuing mailgram to Ees, which was related to scheduled U meeting in another city, advising them not to leave their duty assignment area w/o E's express approval, unlawful, where E had never before instituted rules by mailgram)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(singling out U adherent who had refused to attend meetings in E's office at which E read other U adherents their rights under E's rules concerning U's campaign, and doing so at Ee's work station instead, unlawful, since difference in locations of occurrence is immaterial and Ee could not avoid substance of E's statements)

5006-6710 Using supervisor's office

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(E's method of singling out identified U supporters from midst of their coworkers to attend series of special, private meetings with management officials in their offices, considered locus of managerial authority, and there to be read their rights under E's rules concerning U's campaign, unlawful)

5006-6720 Using individuals as conduits

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Permanent Label Corporation **248 NLRB No. 021**
(E who asks Ees to tell other Ees to vote against U violates Act)

5006-6733 Addressing assembled employees

The Krebs School Foundation, Inc. **251 NLRB No. 187**
(E's solicitation of Ee views in meetings with Ees re terms and conditions of employment by E's personnel subcommittee, unlawful where E established subcommittee and met with Ees to counter U's organizational campaign and to wean Ees away from U by resolving some of their grievances)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(holding some members of U committee up to ridicule and scorn in front of assembled Ees and referring to them as *jokers and clowns* violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**

5006-6733—Cont.

(supervisor meeting with Ees as group and explaining why E could not afford dental insurance and discussing E's improved health benefits, unlawful, where meeting was merely extension of unlawful survey E conducted earlier to solicit grievances and undermine U)

Keister Coal Company, Inc. **247 NLRB No. 049**
(E's speech to assembly of all his Ees during U campaign that *unionizing this company at this time will create a hardship that will have an effect on all of us* held violative, since it constituted threat of economic adversity in event Ees joined or supported U)

5006-6767 Pamphlets, circulars, and printed material

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

5006-6783 Conversation among supervisors

Thermo King Corporation **247 NLRB No. 048**
(remark by one supervisor to another, overheard by known active U adherent in production department, that if situation wasn't corrected *all hell was going to break loose,* not unlawful, where Ee mistakenly or otherwise converted remark to his own use by interpreting statement to mean that Ee would catch hell until supervisor found opportunity to discharge him)

5006-8333 Absence of discrimination or threat rebuts coercion

La Habra Dodge, Inc. **251 NLRB No. 001**
(not violative where E's new car sales manager asked Ee who was long time friend of his if he knew anything about U, to which Ee replied *just rumors*)

La Habra Dodge, Inc. **251 NLRB No. 001**
(service manager's statement that his job was fine *until this U thing came up* and asked former Ee *but you don't know anything about that do you,* not unlawful)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(E's misstatement that Ees would be required to join U and pay dues if U won election held interference but not 8(a)(1) violation absent threat to Ee rights)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ee had a U card for him to sign, unlawful, notwithstanding question was asked in joking manner, in view of E's hostility to U)

5006-8367 Noncoercive circumstances

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where Ee freely expressed opposition to U, E's statement to her that if she felt that way she should tell her friends not violative as it contained neither threat nor promise)

5009 CIVIL SUIT OR CRIMINAL COURT ACTION AGAINST EES OR THREATS THEREOF

Centre Engineering, Inc. **253 NLRB No. 028**
(threats to prosecute Ees because they published list of E's customers, violative since it is tactic calculated to restrain Ees in their exercise of protected rights)

North State Supply Co., Inc. **247 NLRB No. 181**
(E's threat to countersue Ee who had filed charges with Bd, violative as it was claculated to intimidate Ees in exercise of their right to file charges under Act)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(threat to prosecute Ee for distributing U literature on company premises, unlawful)

5012 COMPANY RULES PROHIBITING OR LIMITING UNION OR OTHER CONCERTED ACTIVITIES

5012-0100 Generally

5012-0133 Balancing of interests required

5012-0133-1100 Exercise of employees' rights under Act on company premises protected, even if that necessitates balancing of interests with property rights of employer

Texas Instruments Incorporated **247 NLRB No. 037**
(prior D/O in instant proceeding affirmed by Bd on remand from ct of appeals; in its supplemental decision, Bd determined issue of validity of application of E's dissemination of classified material rule which adversly affected Ees *Sec. 7 rights* against *business justification for E's rule*)

Texas Instruments Incorporated **247 NLRB No. 037**
(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing *--strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(threshold question where discharge was pursuant to rule prohibiting dissemination of E's strictly private material (classified wage survey data) is whether rule was prohibited by Act; invalid rule cannot support discharge even if E's only motivation in enforcing rule is not anti-U; only if rule is determined to be valid under Act, would Bd assess motive)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(even where special circumstances exist rebutting presumption of invalidity of facially overbroad no distribution rule, Ees' interest in distributing material must then be balanced against E's interest in controlling such distribution)

5012-0133-1600 Rule may be justified by need to maintain security

Texas Instruments Incorporated **247 NLRB No. 037**
(prior D/O in instant proceeding affirmed by Bd on remand from ct of appeals; in its supplemental decision, Bd determined issue of validity of application of E's dissemination of classified material rule which adversly affected Ees *Sec. 7 rights* against *business justification for E's rule*)

5012-0133-2200 Purpose of employer in establishing and applying rules and prohibitions controlling

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

5012-0133-2275 Application of prohibition not necessary to finding of violation

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(overlybroad no-solicitation rule violative notwithstanding no Ee ever complained about rule)

5012-0133-3300 Lack of reason for rule indicates invalidity

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

5012-0133-4400 Reasonableness of rule for maintaining order and discipline legalizing factor

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(even where special circumstances exist rebutting presumption of invalidity of facially overbroad no distribution rule, Ees' interest in distributing material must then be balanced against E's interest in controlling such distribution)

5012-0133-5000 Ambiguity in rule construed against promulgator

Sani-Serv, Division of Catalox Corporation **252 NLRB No. 186**
(rule prohibiting solicitation during regularly scheduled working time held violative; modifying phrase *regularly scheduled* exacerbates the ambiguity of *working time*)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(maintenance of rule which prohibits vending, soliciting, or collecting contributions for any purpose whatsoever on Company time and premises unless authorized by E held violative as it is ambiguous because it may include nonwork time in nonworking areas)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

5012-0133-5500 Presumptions may be used in determining validity of rule

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(rule which refers to *working hours* rather than to *working time* is overly broad and presumptively invalid)

5012-0167 Validity of prohibition presumed where limited to working time

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time*, w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(E's new rule proscribing distribution and solicitation during working time in plant w/o prior approval of plant manager held lawful despite replacing unlawful overbroad *no-distribution* rule in Ee handbook, since no one paid much attention to old rule and there was no evidence either old or new rule had been selectively applied or enforced; non-U solicitation had been approved but U had never asked permission to solicit)

5012-0175 Per se violation in application of discriminatorily promulgated plant rule

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(written warning issued as enforcement of unlawful no-solicitation rule, unlawful)

5012-1700 Extension of prohibition against union activities to employees' own time on premises

5012-1701 Generally

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(maintenance of rule which prohibits vending, soliciting, or collecting contributions for any purpose whatsoever on Company time and premises unless authorized by E held violative as it is ambiguous because it may include nonwork time in nonworking areas)

5012-1725 Prohibition of distribution of literature during employees' own time on company premises

5012-1725-0100 Generally

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

5012-1725-0150 Presumptively invalid broad rule banning distribution may be justified by special circumstances

Industry Products Company **251 NLRB No. 183**
(rule prohibiting distribution of printed material w/o management approval held overly broad and unlawfully restrict lawful U activities of Ees)

5012-1725-1100 Plant premises

General Thermodynamics, Inc. **253 NLRB No. 021**
(posting of facially overly broad no solicitation-no distribution rules prehibiting solicitation on *company time* and distribution on company premises w/o permission of management, unlawful, notwithstanding rule never implemented and was removed prior to its effective date where Ees never informed of E's decision not to implement rules)

Central Freight Lines, Inc. **250 NLRB No. 063**

Patsy Bee, Inc. **249 NLRB No. 125**
(requiring E's permission to pass out U literature on company property held impermissibly broad no-distribution rule)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstance of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

5012-1725-1167 Nonworking area

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(Ee cafeteria limited to Ees and physicians and not open to public or patients)

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(E's promulgation of rule which prohibited *bringing on company property any newspapers, magazines, pictures pamphlets; books, drawings or other materials*, unlawful, where prohibition not limited to work areas)

Certain-Teed Insulation Company **251 NLRB No. 208**
(promulgation of overly broad no solicitation/no distribution rule, violative, absent evidence of business necessity for such rule)

Clinton Inn **249 NLRB No. 022**
(no-solicitation, no-distribution rule held unlawfully broad where it failed to distinguish between working and non-working areas)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(prohibition of Ees' distribution of U literature in plant lobby, a nonworking area, unlawful)

5012-1725-1183 Public Areas

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(nurses lounge open to public)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where E told Ee to stop distributing U literature outside Ee entrance but then apologized and let practice resume it did not violative Act)

5012-1725-1700 Working time

Pyromactics, Inc. **251 NLRB No. 141**
(maintenance and enforcement of no-solicitation, no distribution rule, unlawful, since it was overly broad in that its *working hours* prescription was presumptively invalid, E presented no evidence to rebut presumption of invalidity, and rule was otherwise invalid under any of the views expressed in Essex International, 211 NLRB 749)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(rule prohibiting distribution of literature or soliciting during working hours, unlawfully broad)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Carlina Knitting Co., Inc., et al. **JD-321-80**
(prohibition of distribution of leaflets prior to working time on E's property, held unlawful)

5012-1725-3300 Roadways

Permanent Label Corporation **248 NLRB No. 021**

5012-1725-5500 Invalidity of rule where not necessary in interest of efficiency, discipline, or security

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstance of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

5012-1725-8800 Invalidity presumed in absence of showing of necessity to maintain production or discipline

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

5012-1737 Prohibiting solicitation during employee's own time on employer's premises

5012-1737-0100 Generally

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(overlybroad no-solicitation rule violative notwithstanding no Ee ever complained about rule)

N.L.R.B. v. Publishers Printing Company, Inc. **625 F.2d 746 (C.A. 6, 1980)**
(rule allowing no solicitation of any kind, unlawful where it was adopted during U campaign; obviously it was directed at U card solicitation)

512-EMPLOYER INTERFERENCE WITH EMPLOYEE SECTION 7 RIGHTS (8(a)(1))

5012-1737-0183 Presumptively invalid broad rule banning solicitation may be justified by special circumstances

Industry Products Company **251 NLRB No. 183**

(rule prohibiting solicitation, collection of contributions or distribution of literature of any discription held overly broad and unlawfully restrict lawful U activities of Ees)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

5012-1737-2000 Solicitation on plant premises

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**

(no-slicitation rule prohibiting solicitation anywhere on premises w/o distinguishing between working and nonworking time, unlawful)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**

(E's attempting to stop Ee from talking to other Ees concerning U's demand for recognition, violative where Ee's conduct took place during lunchtime and E had no rules regarding solicitation and distribution)

Maywood, Inc. **251 NLRB No. 139**

(barring off-duty Ees from plant premises, violative, where such Ees were in effect seeking access to cafeteria, a non-work area, for purpose of soliciting for U, and had no intention of *wandering about the plant* as E contended, and there was no rule limiting access to plant or rule which met standards defined in *Tri-County Medical Center, Inc.*, 222 NLRB 1089)

Central Freight Lines, Inc. **250 NLRB No. 063**

Irwin County Electric Membership Cooperative **247 NLRB No. 195**

(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

Carlina Knitting Co., Inc., et al. **JD-321-80**

(posting sign on factory door stating *no soliciting in the factory*, held unlawful)

Lester Industries, Inc. **JD-97-80**

(violation where E posted and maintained no-solicitation rule which prohibited soliciting U membership and support during non-working time at plant; subsequent posting of lawful change in rule did not remedy lingering effect of longstanding, invalid rule)

Signode Corporation **JD-161-80**

(counselling Ee against passing U card to another Ee on company time unlawful, where both Ees were on nonwork time)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**

(violation, where E maintained overly broad and improper rule prohibiting U solicitation on the premises)

5012-1737-3300 Working areas

Eastern Maine Medical Center **253 NLRB No. 024**

(hospital's no-solicitation rule, unlawful, since overlybroad on its face and as applied to prohibit solicitation in hospital lobby at issue herein; rule is overly broad as promulgated, because it does not conform to Bd's requirement that E's ban on Ee solicitation on nonwork time is limited to immediate patient care areas and it is therefore presumptively invalid; and E has not established that U solicitation in working areas of hospital which are not immediate patient care areas would either disrupt patient care or disturb patients)

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Permanent Label Corporation **248 NLRB No. 021**

(solicitation process includes distributing U card, signing by Ee and return of card to solicitor, therefore rule banning such activity during nonwork time in work areas is overly broad)

Leeson Electric Corporation **247 NLRB No. 203**

(maintaining rule which prohibited solicitation at any time in work areas, unlawful)

5012-1737-4000 Working time of employees soliciting

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**

(E's promulgation of no-solicitation rule which prohibited solicitation during *working hours* rather than *working time* w/o clearly communicating to Ees its intent to permit solicitation during break times, unlawful)

General Thermodynamics, Inc. **253 NLRB No. 021**

(posting of facially overly broad no solicitation-no distribution rules prehibiting solicitation on *company time* and distribution on company premises w/o permission of management, unlawful, notwithstanding rule never implemented and was removed prior to its effective date where Ees never informed of E's decision not to implement rules)

Blue Bird Body Company **251 NLRB No. 196**

(E's condoning Ee committee's circulating anti-U ptn on Ees' working time while informing U adherents that they had no right to engage in solicitation on Ees' working time, violative, since Ee applied its *no solicitation policy* in discriminatory manner)

Magnesium Casting Company, Inc. **250 NLRB No. 107**

(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Custom Coating & Laminating Corporation **249 NLRB No. 117**

(threatening Ee with discharge if he continued to speak with other Ees during work time violative where Ee's job required him to speak to other Ees and Ee was well known U adherent)

Lyman Steel Company **249 NLRB No. 040**

(two overly broad no-solicitation rules held *prima facie* invalid where E failed to show that it affirmatively communicated to its Ees, or demonstrated by application of rules, that Ees were free to engage in solicitation during breaktime or other periods when they were not actually working)

Colonial Stores Incorporated **248 NLRB No. 142**

(where Ee solicited fellow Ee's signature to ptn during working time on selling flour, E's warning Ee to cease interrupting her fellow Ees' work in process of petitioning, not violative, even though the petitioning activity itself was protected; contrary to GC's contention, E did not thereby unlawfully promulgate overly broad no-solicitation rule)

Conagra, Inc. **248 NLRB No. 085**

(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on my time* where Ee was on own time but Ee she was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**

(violation where E issued rules of conduct prohibiting solicitation during working hours w/o approval of the facility's administrator)

Tartan Marine Company **247 NLRB No. 073**

(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks*, violative)

Lee Simmons and Beverly McKinstry Simmons, a Partnership, d/b/a Elmendorf & Fort Richardson Barber Concessions **247 NLRB No. 093**

(E who restricted Ees use of telephone after U organizing activities began violated Act because rule was overbroad as it applied to working and nonworking time and was intended to ban use of telephone for any organizing activities)

5012-1737-5000 Working hours

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**

(E's promulgation of no-solicitation rule which prohibited solicitation during *working hours* rather than *working time* w/o clearly communicating to Ees its intent to permit solicitation during break times, unlawful)

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**

(rule which refers to *working hours* rather than to *working time* is overly broad and presumptively invalid)

Omark-RCBS, A Division of Omark Industries **252 NLRB No. 089**

(both Ees' handbook and E's application of its no solicitation rule which prevented Ees from soliciting on behalf of U during working hours, violative)

5012-1737-5000—Cont.

Sani-Serv, Division of Catalox Corporation **252 NLRB No. 186**
(rule prohibiting solicitation during regularly scheduled working time held violative; modifying phrase *regularly scheduled* exacerbates the ambiguity of *working time)*

5012-1737-6000 Working time of employees solicited

General Thermodynamics, Inc. **253 NLRB No. 021**
(posting of facially overly broad no solicitation-no distribution rules prehibiting solicitation on *company time* and distribution on company premises w/o permission of management, unlawful, notwithstanding rule never implemented and was removed prior to its effective date where Ees never informed of E's decision not to implement rules)

Blue Bird Body Company **251 NLRB No. 196**
(E's condoning Ee committee's circulating anti-U ptn on Ees' working time while informing U adherents that they had no right to engage in solicitation on Ees' working time, violative, since Ee applied its *no solicitation policy* in discriminatory manner)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Permanent Label Corporation **248 NLRB No. 021**
(E's statement that no solicitation rule covered *company time* violative where it expressly covered break time or lunch time)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on my time* where Ee was on own time but Ee she was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

Tartan Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks*, violative)

5012-1737-6700 Nonworking areas

Maywood, Inc. **251 NLRB No. 139**
(barring off-duty Ees from plant premises, violative, where such Ees were in effect seeking access to cafeteria, a non-work area, for purpose of soliciting for U, and had no intention of *wandering about the plant* as E contended, and there was no rule limiting access to plant or rule which met standards defined in *Tri-County Medical Center, Inc.*, 222 NLRB 1089)

Certain-Teed Insulation Company **251 NLRB No. 208**
(promulgation of overly broad no solicitation/no distribution rule, violative, absent evidence of business necessity for such rule)

Baylor University Medical Center **247 NLRB No. 178**
(on remand from Supreme Court for reconsideration in light of its *Beth Israel Hospital* decision, Bd affirmed prior decision that hospital's rule against solicitation and distribution in its cafeteria violated 8(a)(1) in view of cafeteria's appropriateness for U solicitation due to impracticality of reaching Ees elsewhere and E's failing to show that total prohibition of U solicitation in cafeteria was necessary or that U solicitation destroyed tranquil atmosphere necessary for patient care or was more upsetting than other conversation)

Baylor University Medical Center **247 NLRB No. 178**
(on remand from Supreme Court for reconsideration in light of its *Beth Israel Hospital* decision, Bd affirmed prior decision that hospital's rule against U solicitation and distribution in vending machine areas violated 8(a)(1), since patients' occasional use of vending machines fell far short of establishing area as one of immediate patient care)

5012-1737-7300 Public Areas

Eastern Maine Medical Center **253 NLRB No. 024**
(E's interference with off-duty Ees engaged in solicitation in hospital's waiting-room lobby used primarily by general public, unlawful, notwithstanding E's contention that anxious members of patient's family using lobby deserve greater protection than general public; SCt's concern for patient welfare does not compel conclusion that similar protection from solicitation be afforded members of public who are not themselves patients; and, in view of delivery of health care services at hospital as that may involve lobby, solicitation therein will not adversely affect patient care or disturb patients)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on my time* where Ee was on own time but Ee she was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Bd's orders that Es must c/d from *maintaining any rule or regulation prohibiting its Ees from soliciting on its premises after their shifts have been completed unless such prohibition is demonstrably necessary to maintain production, discipline or security* overly broad; since Es could prohibit Ees from soliciting during nonworking hours in public areas of their premises, Bd's order modified to read that Es must c/d from *maintaining any rule or regulation prohibiting its Ees from soliciting on its premises during nonworking hours in nonpublic areas of its premises*)

5012-1750 Rest periods not working time

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(E's promulgation of no-solicitation rule which prohibited solicitation during *working hours* rather than *working time* w/o clearly communicating to Ees its intent to permit solicitation during break times, unlawful)

P. A. Incorporated **248 NLRB No. 077**
(rule prohibiting solicitation during break time, unlawful)

National Vendors, a Division of UMC Industries, Inc. **630 F.2d 1265 (C.A. 8, 1980)**
(E's banning chief steward, who was also member of contract negotiating committee, from holding *anymore meetings in company cafeteria*, not violative, where E's prohibition was directed solely to chief steward's practice of holding structured, semi-formal, large group meetings during short breaks at cafeteria that is open to all Ees, including supervisory and non-unit personnel; such meetings were disruptive)

5012-1775 Valid where necessary interest of safety and efficiency

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

5012-2500 Discriminatory promulgation of rule

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(promulgating rule prohibiting U activities on working time while permitting other types of solicitations or activities on working time, unlawful)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(E's new rule proscribing distribution and solicitation during working time in plant w/o prior approval of plant manager held lawful despite replacing unlawful overbroad *no-distribution* rule in Ee handbook, since no one paid much attention to old rule and there was no evidence either old or new rule had been selectively applied or enforced; non-U solicitation had been approved but U had never asked permission to solicit)

5012-3300 Limitation of prohibition to union activities

5012-3317 Nonunion solicitation and distribution permitted

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement to Ee not to talk about U during working hours, unlawful, where prohibition limited to U activity, and anti-U and non-U activities and solicitation were being carried on during working hours)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

Datacomp Corporation, A Division of Herbick and Held Printing Company **JD-594-80**

5012-3317—Cont.

(enforcement of no-solicitation rule as applied to distribution of U literature and authorization cards during work hours and in work areas, unlawful, where during same time period and with knowledge and participation of supervisors, solicitation for lotteries and charities during work hours and in work areas was permitted)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(violation, where E who maintained broad no-distribution rule allowed charity groups and political candidate to distribute on its premises; while granting permission to charity groups *is fairly innocuous* allowing distribution by political candidate while denying permission to U group E *is making available to its Ees political views it favors while barring political views which it disagrees with*)

5012-3322 Use of bulletin board

Special Machine and Engineering, Inc. **247 NLRB No. 077**
(E's removal from bulletin board for union business of notice containing wage rate at another E's plant, and threatening of Ee with disciplinary action for further occurences, violative, since material conformed to standards of relevances to union business imposed by E)

Werth Engineering, Inc. **JD-295-80**

5012-3367 Limited to prounion activities

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement to Ee not to talk about U during working hours, unlawful, where prohibition limited to U activity, and anti-U and non-U activities and solicitation were being carried on during working hours)

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(promulgating rule prohibiting U activities on working time while permitting other types of solicitations or activities on working time, unlawful)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(prohibiting Ees from talking about the U on production line and threatening them with discharge if they do so, unlawful where talk of U was only restriction on conversation)

Leeson Electric Corporation **247 NLRB No. 203**
(violation, where E enforced rule prohibiting solicitation at any time in work areas as to U but allowed anti-U Ees to ignore rule, and management agents solicited anti-U attitude not only in working areas, but during working time)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

Signode Corporation **JD-161-80**
(enforcement of no-solicitation rule selectively and disparately against Ee engaging in U activity, unlawful)

5012-5000 Prohibition against union activities enforced discriminatorily

5012-5017 Employer antiunion campaign not also limited

Reeves Rubber, Inc. **252 NLRB No. 026**
(disparate application of rule prohibiting solicitation or distribution of literature in plant on worktime by prohibiting pro-U activities and allowing anti-U ones, unlawful)

Blue Bird Body Company **251 NLRB No. 196**
(E's condoning Ee committee's circulating anti-U ptn on Ees' working time while informing U adherents that they had no right to engage in solicitation on Ees' working time, violative, since Ee applied its *no solicitation policy* in discriminatory manner)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's distribution of leaflet about U while Ees were working at their machines, and having Ee read it, held unlawful discriminatorily applied rule in face of overly broad no-solicitation, no-distribution rule applied to U)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E who generally permitted Ees to talk while at work violated Act where on eve of election it prohibited pro-U Ee from talking to other Ees)

5012-5033 Availability to union of other facilities or means immaterial

Eastern Maine Medical Center **253 NLRB No. 024**
(assuming availability of additional hospital areas (cafeteria, timeclock and lounge areas, etc.) for solicitation of hospital Ees, Bd held hospital's ban on solicitation in waitingroom lobby used primarily by public was not justified)

5012-5050 Discrimination between unions in permitting activity

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(where E overly restricted U solicitation and distribution and gave encouragement to committee formed under its sponsorship, it violated Act)

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(E's discharge of Ee for soliciting for one U while E arranged meetings at which another U's representatives could solicit Ees' membership, unlawful)

Lyman Steel Company **249 NLRB No. 040**
(blanket prohibition against any conversations in plant between Ees who supported disfavored U of E)

5012-6700 Types of employee activities involved

5012-6712 Distribution of union literature

5012-6712-3300 By employees

Central Freight Lines, Inc. **250 NLRB No. 063**

5012-6718 Talking about union activities

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee with regard to another Ee not to talk U with that Ee, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat,* unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

Tartan Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks,* violative)

Lee Simmons and Beverly McKinstry Simmons, a Partnership, d/b/a Elmendorf & Fort Richardson Barber Concessions **247 NLRB No. 093**
(E who restricted Ees use of telephone after U organizing activities began violated Act because rule was overbroad as it applied to working and nonworking time and was intended to ban use of telephone for any organizing activities)

5012-6735 Prohibition of solicitation and/or distribution of literature during employees' own time on company premises

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

Wolverine World Wide, Inc. **JD-185-80**
(E's rule which prohibited all distributing or soliciting on company property w/o authorization violative as overlybroad; moreover fact that E may not have disciplined any Ees for occasional solicitation for charitable causes does not remove rule from its presumed invalidity)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(no-solicitation rule overly broad where prohibition of solicitation on company premises applied equally to Ees' work time and their personal time)

5012-6737 Dissemination of information as to names, addresses, wages and phone numbers of employees

Conagra, Inc. **248 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

Texas Instruments Incorporated **247 NLRB No. 037**
(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing *--strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(rule prohibiting Ees from discussing E's wage schedule with outsiders, unlawful; E's contention public knowledge of wage rates would assist competitors, rejected, where E in mounting its annual wage survey gave out its own data to competitors)

5012-6738 Distribution of literature pertaining to selection or rejection of U

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(permitting distribution of anti-U pamphlet among Ees during company time, violative, since pamphlet ratified implied threats of closure, loss of jobs and privileges)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(circulating anti-U ptn, violative)

5012-6762 Meetings of employees

National Vendors, a Division of UMC Industries, Inc. **630 F.2d 1265 (C.A. 8, 1980)**
(E's banning chief steward, who was also member of contract negotiating committee, from holding *anymore meetings in company cafeteria,* not violative, where E's prohibition was directed solely to chief steward's practice of holding structured, semi-formal, large group meetings during short breaks at cafeteria that is open to all Ees, including supervisory and non-unit personnel; such meetings were disruptive)

5012-6787 Wearing or otherwise displaying union insignia or signa

Pay 'N Save Corporation **247 NLRB No. 184**
(E's unwritten rule against wearing of political or controversial buttons, including U buttons, unlawful, where there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

Pay 'N Save Corporation **247 NLRB No. 184**
(E's enforcement of rule against wearing of buttons on store premises, unlawful, where E allowed Ees to wear various kinds of religious as well as other buttons but disparately enforced its button policy against Ees wearing U buttons)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(maintaining and enforcing rule prohibiting any form of solicitation between Ees during working hours, violative; here E prohibited Ee from wearing U button)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(promulgation and enforcement of rule prohibiting display of signs or stickers urging boycott of E's product on E's property in work or nonwork areas, unlawful, where E failed to show special circumstances sufficient to justify rule; while E claimed rule was necessary to monitor internal security and to guard against incidents at plant gates; in instant case, boycott sign was displayed over mile from anywork facility, inside Ee's vehicle; and wording of sign was not so provocative as to remove protection of Act)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(promulgation and enforcement of rule prohibiting display of signs or stickers urging boycott of E's product on E's property in work or nonwork areas, unlawful, where display of sign by Ees was not indefensible inasmuch as sign did not disparage quality of E's product and its urgingof boycott in support of E's other stocking Ees was related tolabor disputes)

5012-6787-3300 May not be prohibited absent special circumstances

Allen-Stone Boxes, Inc. **252 NLRB No. 171**
(requiring Ee to remove U insignia he was wearing on his back while at work, violative)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(violation where E maintained overly broad rule prohibiting Ees from wearing U buttons and insignia while at work)

5012-6787-6700 May be prohibited if tendency to disrupt production or discipline

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

5012-6787-8300 Disparate treatment in display of insignia

The Nestle Company **248 NLRB No. 106**
(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

5012-8300 Access of nonemployee union agents denied or limited

5012-8301 Generally

United States Steel Corporation **253 NLRB No. 083**
(denying discharged Ee right to distribute his literature in his campaign for U office on company property, not unlawful where no showing was made either that nonEe lacked alternative means of communicating with Ees or that access to company property was so widespread that denial to him was disparate)

Giant Food, Inc. **252 NLRB No. 182**
(instructing Ees to eject U representatives from stores by force violative as demonstration of extreme measures E will employ to defeat U and E's power over Ees employment)

5012-8320 Distribution of literature or solicitation on company property may be prohibited where employees can reasonably be reached through other channels

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

5012-8320-5000 Adequacy of other channels of access

United States Steel Corporation **253 NLRB No. 083**
(denying discharged Ee right to distribute his literature in his campaign for U office on company property, not unlawful where no showing was made either that nonEe lacked alternative means of communicating with Ees or that access to company property was so widespread that denial to him was disparate)

Hutzler Brothers Company v. N.L.R.B. **630 F.2d 1012 (C.A. 4, 1980)**
(ct reversed Bd finding that E unlawfully denied U organizers access to store Ees since GC had not sustained his burden of proving that U had no other reasonable means of communicating with Ees; absent effort by U to communicate by other possibly available means, Bd could only infer inadequate access from physical evidence of structure and location of plant, working habits of Ees, and conduct of E)

5012-8340 Must be granted under reasonable regulations where necessary to realization of employees'right

Villa Avila **253 NLRB No. 010**
(General Contractor who posted no tresspassing signs strictly limiting U business representatives' access to construction sites violated Act where communication between U, subcontractors and their Ees severely restricted; however, General Contractors can require U representatives to give him notice as precondition for access to job site)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

5012-8380 Solicitation or distribution in public areas

5012-8380-5000 Health care facilities

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(nurses lounge open to public)

N.L.R.B. v. Baylor University Medical Center **439 U.S. 9 (SCt, 1980)**
(ct affirmed ruling that E could prohibit solicitation in hospital corridors, holding that corridors are entitled to same protection accorded other areas devoted essentially to patient care)

5012-8700 Access to plant while off-duty

Maywood, Inc. **251 NLRB No. 139**
(barring off-duty Ees from plant premises, violative, where such Ees were in effect seeking access to cafeteria, a non-work area, for purpose of soliciting for U, and had no intention of *wandering about the plant* as E contended, and there was no rule limiting access to plant or rule which met standards defined in *Tri-County Medical Center, Inc.*, 222 NLRB 1089)

Werth Engineering, Inc. **JD-295-80**

Cedarwood Care Center **JD-(SF)-315-79**
(E's posting of signs requiring Ees to punch time cards no more than seven minutes before or after their scheduled shift not unlawful limiting of access since for valid reason in view of requirement of Fair Labor Standards Act that Ees be paid for quarter hour as reflected by time cards)

5012-9300 Other rules

Sani-Serv, Division of Catalox Corporation **252 NLRB No. 186**
(rule prohibiting encouraging of or participation in work slow down or work stoppage, violative as it prohibits even those protected by Section 7)

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

International Business Systems, Inc. **247 NLRB No. 102**
(violation where after election in lithographic unit E told unit pressmen that there would be no talking among them; there was no persuasive evidence concerning necessity to prohibit pressmen from talking to each other)

5018 PERMISSION TO USE COMPANY TIME AND PREMISES OR FACILITIES

5018-3300 Discriminatory denial of use

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(E hotel's telling Ees, some of whom were supervisors, not to re-enter hotels public-premises, violative, since prohibition was consequence of Ees' having engaged in protected concerted activity, and also since there was no evidence that E had rule forbidding discharged Ees from entering its premises or evidence that discharged Ees who had not exercised Section 7 rights were ever denied entrance to hotel)

5018-6700 Solicitation, collection, circulation, etc., on company time and premises

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

5024 SURVEILLANCE

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(plant superintendent's temporary relocation of his desk to plant area during pendency of election, not unlawful, where superintendent was partially immobilized because of use of crutches due to physical infirmity, as result of relocation he was more accessible to Ees and to work in plant, and he thereby overcame effects of his physical handicap)

5024-2000 Searching employee(s)

Russ Togs, Inc. **253 NLRB No. 099**
(searching of Ee who was going to U to complain about E's subcontractual wage rates in presence of other U-bound Ees, unlawful)

5024-2500 Urging employees to inform

Dillman Foods, Inc. **253 NLRB No. 114**
(violation where E explained to Ees his company policy that *he did not want U* and instructed Ees to report identity of U card solicitors *and he would take care of it accordingly*)

Smith Auto Service, Inc. **252 NLRB No. 068**
(violation where few days after U filed ptn E's president told U Ee if he should hear anything or know anything about U, he should tell E's president and E president would take care of him)

Red Food Store **252 NLRB No. 023**
(soliciting Ees to report activities of suspected U organizers, violative)

Maywood, Inc. **251 NLRB No. 139**
(soliciting Ee to observe and report to supervision the U activities of other Ees, violative)

W. F. Hall Printing Company **250 NLRB No. 122**
(mtn for summary judgment granted where it is admitted that E sent Ees letter, using language substantially same as that which has recently been found unlawful, requesting them to refuse to sign U authorization cards and also to report to E if any Ee harrassed them about signing U authorization cards)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president asking Ee to interrogate other Ees concerning U activities to ascertain if certain Ee had signed U card and Ee's subsequent interrogation of another Ee, unlawful, since Ee acting as non-supervisory agent of E)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(violation where E's attorney asked Ee, closely allied with management, to obtain information concerning U activities from a discriminatee, and requested information was obtained and reported to E who committed ULPs based, in part, thereon)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(asking Ee to attend U meeting and report back what happened, unlawful)

St. Francis Hospital **249 NLRB No. 017**

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ee to let him know if he heard anything about Ee organizing campaign, violative)

Tartan Marine Company **247 NLRB No. 073**
(E posting notice requesting that Ees notify supervisors if any members of U organizing committee or anyone else attempted to *bother* Ees during working time about U, not unlawful, notwithstanding tone of notice, which also advised Ees against signing authorization cards and warned that members of U organizing committee would be held to full compliance with company rules, was hostile to U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(asking Ee to report to E whether pro-U Ees were pressuring her to sign U card, unlawful)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(notice E posted on company bulletin board prior to election which asked Ees to report to E if they were put under pressure to join U violative as it had potential effect of encouraging Ees to report to E identity of U card solicitors and also to discourage card solicitors in their protected organizational activities)

5024-3300 Photographing employees

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**

Funk Manufacturing Company, A Division of Cooper Industries, Inc. **JD-(SF)-267-80**
(taking pictures of Ees' handbilling violative, where no valid reason for photographs existed)

5024-3700 Creating impression of surveillance

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**

Dillman Foods, Inc. **253 NLRB No. 114**
(violation where E stated to U adherent that he had *sources* informing him that Ee was *still going around behind (E's) back causing problems and still in active support of the Union*)

Crown Cork & Seal Company, Inc. **253 NLRB No. 035**
(statement to U adherent that if he signed U card E would know about it, violative, since such remark created impression of surveillance)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(surveillance implied by supervisor's statement to Ee that another Ee was incompetent and meeded U protection)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee why Ee held U meeting in her home if Ee did not have anything to do with U, unlawful)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(impression created by supervisor's statement to Ee that Ee's good friend was trying to sway Ee's vote in favor of U)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(impression created by supervisor's statement to Ee that he knew E had been passing out U cards and that Ee was ring leader in movement for unionization)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(impression created by supervisor's statement to Ee that he did not like Ee's look at meeting when wage increases were announced because Ee was implying that U was responsible for increases)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(creatated where supervisor asked U adherent what she was talking about, and when she replied that she was talking to herself, stated that adherent had been doing more aound office lately than talking to herself)

Gladieux Food Service, Inc. **252 NLRB No. 106**
(statement that E had heard that E voted for U in election, violative, since such statement created impression of E surveillance)

GE's Trucking, Inc. **252 NLRB No. 131**
(E's conversation with leading U advocate, unlawful, where in context of other unlawful statements E stated that he had heard rumors of U activity, which was not matter of common knowledge, and thereby created impression of surveillance)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(impression not created where supervisor asked picket *what picket was doing there because he felt there was U meeting* since there was no element of interference or coercion)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(impression not created by supervisor's informing group of Ees, as well as certain Ee individually, that somebody in the shop heard that *the Union was going to the people in the shop;* such information not directed to any Ee's organizing activities amounted to generalized statement to Ees)

Franklin Fouts, d/b/a B & F Cartage **251 NLRB No. 068**
(terming U adherent *instigator* day after Ee attempted to get other Ees to sign U cards, violative as constituting impression of surveillance)

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(asking questions which were couched in terms reasonably calculated to lead Ees to believe that their U activities were already known to E created unlawful impression of surveillance)

Blue Bird Body Company **251 NLRB No. 196**
(Ee's announcing that another Ee had done *good job* for E when he reported to E what he had seen and heard at U meetings)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(by telling Ee that E had knowledge of U meeting through his *connections*)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**

5024-3700—Cont.

(statement, prior to unlawfully searching Ee's locker for U documents, that search was prompted by observation of another Ee reading a U paper conveyed unlawful impression of surveillance)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(E telling Ee that E had list of and knew who signed U cards, violative)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling Ee that E would know how Ees voted in election, violative)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(no violation, where during U campaign E searched Ees' purses and bags as Ees left its garment warehouse; contention search was to ascertain presence of U literature, rejected, since E had legitimate need for searches in order to minimize theft from warehouse and in view of previously existing rule stating bags were subject to search and there had been checks in past)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(by telling Ees of E's awareness of scheduled U meeting and thereafter telling Ees of its knowledge of who had attended U meeting and what had been said)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(statement that E knew Ee was going to U meetings because her car was seen at U meeting places, and E's statement that E had heard Ee had signed U card)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(by stating to Ees at meetings that E would know who among its Ees had signed U cards)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(by conspicuously surveilling passing out of U leaflets)

Central Freight Lines, Inc. **250 NLRB No. 063**
(terminal manager's telling Ee, truckdriver, that his truck had been observed at U meeting)

Central Freight Lines, Inc. **250 NLRB No. 063**
(terminal manager's telling hospitalized driver, when discussing U, that *I have ways of finding out things*)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president informing Ee that Ee was on his list of suspected U sympathizers and asserting he would not let any young girls take over and run his business, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created where supervisor informed Ee that E's president knew she had signed U card)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created by E's president informing Ees during their termination interview that someone told him they had been soliciting U cards, unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created where supervisor informed Ee that an Ee had already admitted signing U card and that another Ee knew something about U but was not saying anything)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president's attempt to create impression of surveillance by informing Ee that E was already aware of who U sympathizers were and specifically naming Ees, unlawful)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E responded to inquiry about how E knew what was said at U meeting that E had people there who gave E information, thus giving impression of surveillance)

Patsy Bee, Inc. **249 NLRB No. 125**

Sentry Investigation Corp. **249 NLRB No. 130**
(impression created by E's president accusing Ees of being instigators and ring leaders of campaign to change bargaining representative to U not desired by E)

Hedison Manufacturing Company **249 NLRB No. 096**
(no impression of surveillance created by supervisor's statement to Ees that he knew they were engaged in U activities where Ees were open in their support of U and E was well aware of their U adherence)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(telling Ees that E knew all Ees who had signed U authorization cards)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(morning after U's election of officers E stated *I know what is going on around here-----*)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E president's statement to Ee that he had heard Ee was organizing U drive did not create impression of surveillance where Ee had previously complained to E president that other Ees were blaming her for starting U activity)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(impression created by statement to effect that E knew Ee was not involved with U)

Lyman Steel Company **249 NLRB No. 040**
(telling Ees that E *knew how everyone voted*)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(impression created where supervisor informed Ee that he understood there was to be U meeting that night)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(supervisor's telling Ee, *your buddy from the Union says hello,* violative, where the buddy referred to was individual who had made initial U contact)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(supervisor's statements that he knew Ee had signed Ees' complaint letter which was sent to E's president, not violative, in view of possibility that statements were made after copy of the letter was received from president's office)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee that he thought he would attend U meeting, and when reminded he could not vote replying *Well, I could come and take names,* unlawful, notwithstanding contention supervisor joking and no Ee could take as serious threat; further, E's agents had previously committed numerous violations including supervisor involved)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(E vice-president's asking bargaining unit Ee if he was going to U meeting and then telling Ee that he had ways of finding out about U meeting, that he had latest information about U, and that he intended to ascertain which Ees were involved, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(statement that head waiter knew of U meeting although he was not present at such meeting held violative)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(response to inquiry from Ee about how he knew about U, supervisor's reply of *I just know* implied that E's knowledge of U activity gained through surveillance)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(E's statement that he had a list of yes votes and no votes created impression of surveillance and interfered with election)

Wolverine Worldwide, Inc. **247 NLRB No. 137**
(plant manager created impression of surveillance by driving by U sponsored picnic; although incident isolated found violative in context of other ULPs)

Tartan Marine Company **247 NLRB No. 073**
(impression not created by supervisor asking Ee if Ee knew of U meeting, who was there, who was trying to get people together, and where meeting was held, since supervisor informed Ee where and from whom he had heard about Ee and U)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(statements directed at Ees that E knew who among its Ees supported U, violative since such statements created impression of surveillance)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(advising Ee that E knew who was at meeting and the like, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(E's statement regarding Ee's influence with other Ees did not create impression of surveillance where Ee could not have reasonably assumed from statement that his U activities were under surveillance, since Ee's pro-U sympathies were matter of common knowledge and Ee was aware that his views were known to others)

Galax Apparel Corporation **247 NLRB No. 026**

Checker, Inc., d/b/a Checker Cab Company **247 NLRB No. 019**
(impression not created where supervisor informed Ees he had list of Ees supporting U since there was no indication list had been obtained by surveillance and Ees could not reasonably assume acquired by surviellance where supervisor identified source of list as pro-U Ee)

Koh-I-Nor Rapidograph, Inc. **JD-(NY)-76-80**
(E did not create impression of surveillance in speech to Ees prior to planned U organization meeting where it let Ees know that it was aware of meeting, where subject of U meeting was common knowledge and Ees had widely discussed it, sometimes in presence of supervisors)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(supervisor warning Ee that she was going to tell him about U and that he knew about her U activity, created impression of surveillance)

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's informing U adherents of E's knowledge of U meeting and distribution of authorization cards created unlawful impression of surveillance)

5024-3700—Cont.

Giuliem Apparel Corp. **JD-162-80**
(statement that E had list of troublemakers in context of conversation about U created impression of surveillance)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(informing Ee that tabulation was being kept of Ees as to whether they were for or against U)

Anserphone, Inc. v. N.L.R.B. **632 F.2d 4 (C.A. 6, 1980)**
(no finding of unlawful creation of impression of surveillance of U activity where surveillance, if any, was limited to few off-handed statements made by a supervisor)

N.L.R.B. v. Jarva Incorporated **623 F.2d 483 (C.A. 6, 1980)**
(supervisor predicting to Ee and to another Ee that because Ee was instigator of U that Ee would be head committeeman once U got in, not unlawful, since statements made jokingly and Ees stated they felt no coercion)

5024-3900 Surveillance of union organizers

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(no unlawful surveillance found, where family members of E were seen observing non-Ee U organizers *demonstrating* and soliciting Ees in front of plant; such evidence indicates no more than a brief inspection by E of open U activity in front of its property)

Maywood, Inc. **251 NLRB No. 139**
(supervisor's saying to Ee who became member of in-plant committee for U, *I hear you have been making house calls,* violative where he knew Ee was active in U and he had idea that that was what the house calls were about)

Maywood, Inc. **251 NLRB No. 139**
(supervisor's reading magazine at same table in cafeteria where U leaders sat, following three U activists into women's room and just standing there, and following three other U activists *all through the plant,* not unlawful surveillance of Ees' U activities, where U campaign was conducted openly in areas on E's premises in full view of management, and supervisor's duties required her to observe what was going on)

Lippincott Industries, Inc. **251 NLRB No. 034**
(no unlawful surveillance of Ees' U activities where 2 supervisors observed U organizers participating in circulating and signing U authorization cards in company parking lot)

5024-4100 Surveillance of union handbilling or picketing

Crown Cork & Seal Company, Inc. **253 NLRB No. 035**
(merely observing leafletting in front of plant, not unlawful)

Crown Cork & Seal Company, Inc. **253 NLRB No. 035**
(observing leafletting in front of plant and taking contemporaneous notes of such activity, violative)

Metal Industries, Inc. **251 NLRB No. 201**
(presence of 3 management officials in Ees' parking lot during U's leafletting, not unlawful surveillance where officials regularly stationed themselves in parking lot at end of day to bid Ees good-bye and answer their questions; management may lawfully observe U's public leafletting, particularly on company premises, unless officials do something extraordinary; here only unusual action was one official's placing himself farther away from Ees than usual, thus having less impact)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although supervisor's conduct in observing pro-U Ees while they were distributing handbills on E's premises was not in itself unlawful, his conduct in writing what appeared to be their names on a pad was unlawful, since conduct created in Ees' minds impression that their names were being noted for future discrimination)

5024-4133 Photographing

National Steel Products **252 NLRB No. 120**

Excavation-Construction, Inc. **248 NLRB No. 081**
(photographing of picketing Ees not violative where violence was occurring on picket line and E had reason to believe that U was engaging in impermissible strike conduct)

5024-4167 Observation by supervisors

Russ Togs, Inc. **253 NLRB No. 099**
(supervisor's taking of notes as Ees punched out to go to U office to file grievances, unlawful)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(actions of supervisor who barged into Ees' U meeting at hotel, demanded to know what had been discussed and provoked fight violative, notwithstanding E demoted supervisor and assigned him to remote area as this action was not enough to effectively repudiate supervisor's unlawful conduct)

5024-5000 Professional espionage

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee if Ee had stated at U meeting that she had received only 1 merit raise while employed by E and upon Ee's denial she had made statement informed Ee several witnesses had heard her and that in effect Ee was saying that E was a terrible place to work and asked if Ee wanted U, unlawful)

5024-5400 Surveillance of employees at work

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge for Ee's alleged disruptive behavior and generally *poor attitude* which caused supervisor to *watch* her, held violative where Ee's propensity to engage in protected concerted activity caught attention of E which was motivated to engage in *special surveillance* of Ee's work performance and to seize upon her first alleged transgression as pretext to terminate her)

Providence Hospital **251 NLRB No. 148**
(following U adherent while he performed his duties constituted unlawful surveillance where E's reason for conduct was not substantiated and E had previously solicited another Ee (outside Sec. 10(b) period) to report on Ees who attended U meetings and on their U activities)

Ben Franklin Division of City Products Corporation **251 NLRB No. 200**
(watching Ee at work and examining contents of his file folder containing work papers legitimate exercise of supervision and not surveillance)

Lyman Steel Company **249 NLRB No. 040**
(vice-president instructed by E *to contain (U adherent) to his welding department*)

Tartan Marine Company **247 NLRB No. 073**
(where entire work force visible to supervisors, no unlawful surveillance, absent evidence E watching Ees more closely during U campaign)

5024-5800 Supervisors instructed to observe and report union activity or membership

Crown Cork & Seal Company, Inc. **253 NLRB No. 035**
(requesting new plant manager to report *on the job* bothersome U activity, not unlawful where request was limited to such activity only during working time as opposed to general request)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(directing supervisors to observe and report on Ees' U activities, not unlawful)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

5024-6000 Attendance at union meeting

Stafford Construction Co. **250 NLRB No. 128**
(statement that E would have observer at U meeting violative)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(actions of supervisor who barged into Ees' U meeting at hotel, demanded to know what had been discussed and provoked fight violative, notwithstanding E demoted supervisor and assigned him to remote area as this action was not enough to effectively repudiate supervisor's unlawful conduct)

5024-6600 Observation or ascertainment of employees' meeting or place of meetings

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(surveillance of U meetings of night shift Ees by night shift foreman, unlawful)

Stafford Construction Co. **250 NLRB No. 128**
(statement that E would have observer at U meeting violative)

Patsy Bee, Inc. **249 NLRB No. 125**

Custom Coating & Laminating Corporation **249 NLRB No. 117**

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation where, soon after interrogating Ees as to whether scheduled informal gathering of Ees was in fact U meeting, supervisor momentarily visited local bar where the informal gathering was taking place)

Retailer's Coupon Redemption Co., Inc. **JD-194-80**
(violation where E's president and her family members, accompanied by certain supervisors, positioned themselves outside Ees' U organizational meeting room, where they were clearly able to note identities of Ees attending, who had to file past the president to enter the meeting room)

5024-6700 Observation or ascertainment of solicitation away from Employer's premises

United Services For The Handicapped **251 NLRB No. 117**
(supervisor going to client to verify report that striking Ees were soliciting nonstriking Ees at client's premises, and to determine which strikers engaged in solicitation, violative)

5024-7100 Observation of employees meeting with union representatives

Woodland Molded Plastics Corp. **250 NLRB No. 020**

5024-7100—Cont.

(setting aside of election warranted where E's treasurer observed for 10-15 minutes activities between U organizers and Ees taking place on public property; notwithstanding his initial presence was for lawful purpose of keeping U organizers off E's property in response to reports U organizers on company property)

5024-9900 Other

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(where E sponsored Ee committee, led meeting, conducted vote, counted ballots in secret, announcing that E's proposals were accepted, such activity constitutes surveillance and is violative)

5030 INTERROGATION CONCERNING UNION ATTITUDE, MEMBERSHIP, OR ACTIVITIES (See also 512- 5048)

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

5030-0100 Generally

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(questioning outspoken U supporters as to what they thought U could do for Ees, whether they would still *be union* if they had it to do over again, and whether they had had opportunity to sign ptn for new U election held unlawful, notwithstanding Ees were open and known U supporters and inquiries were unaccompanied by threats or promises; accordingly, Bd hereby overruled *Stumpf Motor Co. and B.F. Goodrich Footwear* to extent they hold that an E may lawfully initiate questioning about Ees' U sentiments where Ees are open and known U supporters and inquiries are unaccompanied by threats or promises)

5030-0125 Coercive circumstances

Shirt Shed, Inc. **252 NLRB No. 042**
(interrogation of openly pro-U Ees concerning their U sympathies or reasons for supporting U violative; fact that questioning did not contain threats does not remove its coercive nature)

Westwood Import Company, Inc. **251 NLRB No. 162**
(supervisor asking U steward who had been passing out information for U why she was *so much for U* after he had requested steward to cease distribution activities, unlawful, since supervisor was high-up in hierachy and questioning took place in his private office at a time when E was unlawfully refusing to bargain)

Weyerhaeuser Company **251 NLRB No. 097**
(questioning Ee about wearing U button and *if it was going to feed him*, violative)

Lippincott Industries, Inc. **251 NLRB No. 034**
(interrogation of 2 Ees, unlawful, since probing of views on Us, even addressed to Ees who have openly declared their prounion sympathies, is coercive)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E at meeting he called after being notified U had claimed majority asking Ees how many of them had signed up with U, unlawful, in context of extreme animus displayed by E at meeting, notwithstanding Ees did not answer)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present at subsequent interview with E's president)

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to Ee wearing U button that his U activities would have negative effect on his chances for job reassignment constitute threat but not interrogation as to his U sympathies)

Boyle-Midway, Inc., Division of American Home Products Corp. **247 NLRB No. 124**
(systematic interrogation about U with individual Ees in locus of authority, violative, where purpose of questioning was not revealed and no assurance against reprisals were made)

McLean Trucking Company **JD-368-80**
(manager's calling Ee into his office and privately questioning her because he had learned that Ees had signed U cards, violative where there was no evidence of any assurances against reprisals; in addition, private conference conducted in manager's office tended to contribute to coercive atmosphere)

Byrne Sand & Gravel Co., Inc. **JD-314-80**
(supervisor asking Ee *what's this I hear about U*, not unlawful, where isolated incident and absent U animus)

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(questioning Ee about U's organizing effort by low level supervisor violative where E's higher-level management had clearly indicated their anti-U feelings and had discharged supervisor who had become involved in U activity)

N.L.R.B. v. Jarva Incorporated **623 F.2d 483 (C.A. 6, 1980)**
(supervisor predicting to Ee and to another Ee that because Ee was instigator of U that Ee would be head committeeman once U got in, not unlawful, since statements made jokingly and Ees stated they felt no coercion)

Pelton Casteel, Inc. v. N.L.R.B. **627 F.2d 23 (C.A. 7, 1980)**
(foreman's actions of calling approximately fifty Ees to his office one at a time to explain significance of U cards held, contrary to Bd, not to constitute unlawful interrogations where thrust of interviews was to inform Ees that E was against unionization and record does not indicate that any Ee could reasonably have viewed interviews as coercive)

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(interrogation of Ees, assertedly to investigate unfavorable and untrue rumors concerning E's future course of conduct if U were defeated, violative, where Ees were not assured against reprisals or told why they were beng questioned; moreover, rumors were too speculative to be taken seriously)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(enforcement granted on Bd's determination that interrogation of Ee, unlawful, where totality of circumstances indicated animosity towards Ee for her U activity and threat of discharge for any *further* violation of E's no solicitation rule was made)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(no violation, where no evidence E authorized remarks of *low level supervisor*; further, where *low level supervisor* had voted in election and Ees knew that his anti-U bias was personal Ees did not have just cause to believe he had made threatening remarks on behalf of management)

5030-0150 Coercive in light of other unfair labor practice

Lika Corporation **JD-(SF)-69-80**
(interrogation concerning U sympathies violative notwithstanding accompanied by assurances against reprisal where also accompanied by offer of benefit)

5030-0175 Not coercive per se

Sweetheart Cup of Texas **251 NLRB No. 057**
(supervisor's asking Ee single question of how he liked film on Teamsters U that E had shown at Ee meeting, not coercive)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(supervisor's engaging in interrogation w/o giving Ees assurance against reprisals, unlawful)

Southwestern Bell Telephone Company **JD-(SF)-304-79**
(E's inquiries regarding possible violations of valid rule restricting access of U representatives to Ees who are working can be interpreted as involving an effort by E to ascertain facts to aid investigation into unauthorized visits of non-Ees; although U activity may have been the conduct that generated violations of valid plant rules, E will not be precluded from questioning Ees about violations of such rules or be barred from reminding Ees that they are not to engage in activity in disregard of rules)

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1980)**
(Bd's finding that E's manager's inquiry among Ees as to who was filing charges in regard to change in job requirements was unlawful interrogation reversed since there was no finding by Bd or substantial evidence on record that statement was motivated by anti-U animus, that it was made in attempt to seek information upon which E would take action against pro-U Ees, or that it was made in coercive or hostile setting)

5030-2000 Questioning of applicants for employment

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(ct held E violated Act where personnel manager urged prospective Ee not to join U; absence of threats does not alter conclusion)

5030-2050 Questioning applicants as to their union membership, adherence, or activities

Eastern Maine Medical Center **253 NLRB No. 024**
(interrogation of job applicants by high official of E in her office regarding their positions concerning U, which was not accompanied by assurance

5030-2050—Cont.

against reprisal, had no lawful purpose, and took place in atmosphere conducive to coercion, unlawful)

Smith Auto Service, Inc. **252 NLRB No. 068**
(violation where at prehire interview E president asked prospective Ee if he liked U and did he have anything against U)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

Lyman Steel Company **249 NLRB No. 040**

Nice-Pak Products, Inc. **248 NLRB No. 173**

Vantage Petroleum Corp. **247 NLRB No. 202**
(E's inquiry as to whether individuals were interested in employment w/o U representation, not violative, where inquiry merely sought to see whether the individuals were interested in employment at E's stated terms and conditions or were insisting upon package deal)

RMX, Inc. **JD-583-80**
(interrogating applicants for employment concerning their feelings toward Us, unlawful)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(violation, where applicant was informed Ees had elected to go U, that there might be strike, and asked whether she would cross picket line)

N.L.R.B. v. Slotkowski Sausage Company **620 F.2d 642 (C.A. 7, 1980)**
(in plant where 2 Us have outstanding contracts it is not illegal to ask applicant in pre-employment interview whether he belongs to U and if so which one)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(where employment agency used application forms containing questions about applicant's U activities, E violated Act when it took no action to alleviate impression these forms made on applicants)

5030-4000 Questioning of employees

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(violation where E asked Ee if he felt guilty for having caused E to discharge fellow Ee for engaging in U activities, which was followed by unlawful discharge of Ee when he disclaimed any guilt feelings)

5030-4020 Concerning own union membership adherence or activities

Riley-Beaird, Inc. **253 NLRB No. 085**
(inquiry as to basis for Ee's U sympathies, unlawfully coercive in that it required Ee to defend his statutorily protected beliefs)

Centre Engineering, Inc. **253 NLRB No. 028**
(supervisors questioning of Ees concerning U activities violative, notwithstanding Ees had openly declared themselves U adherents)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(asking Ee why she was not wearing U pin; violative)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking U adherent why she would permit disagreement with immediate supervisor to lap over into support of U, unlawful)

Pioneer Natural Gas Company **253 NLRB No. 003**
(asking Ee if she was going to attend U meeting that night, violative)

Pioneer Natural Gas Company **253 NLRB No. 003**
(asking Ee if she had filled out U card, violative)

Pioneer Natural Gas Company **253 NLRB No. 003**
(labor attorney's asking Ee, who was not aware that attorney was retained by E when she telephoned him about *a work problem*, whether she had or was in U, not violative, since this would be logical question from any labor attorney in regard to Ees' work problems)

Allen-Stone Boxes, Inc. **252 NLRB No. 171**
(asking Ee if he thought U would be good for company, violative)

Gladieux Food Service, Inc. **252 NLRB No. 106**
(asking Ee for an opinion about probable outcome of election did not constitute unlawful interrogation, where it was not coupled with request for information concerning Ee's personal wishes for or against U)

B. K. Restaurants Olean, Inc., d/b/a Burger King Restaurant **252 NLRB No. 065**
(asking Ee whether anyone had heard about U, and if Ee had heard anything about U, violative)

Americana Health Care Corporation of Ohio d/b/a Barberton Manor **252 NLRB No. 057**
(questioning U supporters about their suspected U activities, violative)

B. E. & K., Inc. **252 NLRB No. 036**
(E's preelection conduct in asking Ees how they were going to vote and why they felt they needed U, unlawful and interference, where there was no evidence that there existed, or that Ees were advised of, a legitimate need or purpose for such interrogation, or that Ees were given assurances of nonreprisals concerning such interrogation)

Red Food Store **252 NLRB No. 023**
(asking Ees whether they signed U cards during meeting attended by all Ees in which E expressed its intent to prevent U organization, violative)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(questioning outspoken U supporters as to what they thought U could do for Ees, whether they would still *be union* if they had it to do over again, and whether they had had opportunity to sign ptn for new U election held unlawful, notwithstanding Ees were open and known U supporters and inquiries were unaccompanied by threats or promises; accordingly, Bd hereby overruled *Stumpf Motor Co. and B.F. Goodrich Footwear* to extent they hold that an E may lawfully initiate questioning about Ees' U sentiments where Ees are open and known U supporters and inquiries are unaccompanied by threats or promises)

Maremont Corporation, World Parts Division **251 NLRB No. 110**
(supervisor's distributing pro-company hats with *vote no* buttons on them to Ees shortly before election, held an unlawful interrogation of Ees concerning their U membership, activities, and desires, and also an interference with election)

Certain-Teed Insulation Company **251 NLRB No. 208**
(no violation where E sought out each Ee prior to election to *let them know we were at their disposal if they had any questions concerning the union*)

Westwood Import Company, Inc. **251 NLRB No. 162**
(supervisor asking U steward who had been passing out information for U why she was *so much for U* after he had requested steward to cease distribution activities, unlawful, since supervisor was high-up in hierachy and questioning took place in his private office at a time when E was unlawfully refusing to bargain)

Weyerhaeuser Company **251 NLRB No. 097**
(simple inquiry as to whether or not Ee had made up his mind about how he was going to vote in upcoming election, w/o more, not unlawful)

Weyerhaeuser Company **251 NLRB No. 097**
(questioning Ee why he wanted U, violative)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by interrogation of Ee about her signing U card by nonsupervisory Ee whom Ees could reasonably believe to be speaking for management)

Lippincott Industries, Inc. **251 NLRB No. 034**
(interrogation of 2 Ees, unlawful, since probing of views on Us, even addressed to Ees who have openly declared their prounion sympathies, is coercive)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(coercively polling Ees concerning their U sympathies and activities, unlawful)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(asking Ee why he joined U, unlawful)

General Thermo, Inc. **250 NLRB No. 158**
(assistant plant manager's interrogation of Ee as to his U activities, unlawful, notwithstanding social nature of occasion in which interrogation took place)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(supervisor asking Ee what she thought of speech in opposition to U by E's president, unlawful, since question necessarily constituted attempt to ascertain Ee's feelings about U and had coercive effect where supervisor had previously interrogated Ee)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor instructing Ee to admit to E's president that she had signed U card and was conversant with U's organizing efforts, unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president asking Ee to interrogate other Ees concerning U activities to ascertain if certain Ee had signed U card and Ee's subsequent interrogation of another Ee, unlawful, since Ee acting as non-supervisory agent of E)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(request for Ees' *vote of confidence* at Ee meeting violative, since such vote could be expected to reveal dissatisfied Ees who would be most likely to support U organizational efforts)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals

5030-4020—Cont.

given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present at subsequent interview with E's president)

Han-Dee Pak, Inc. **249 NLRB No. 107**

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**
(asking Ee whether he was the one who would like to put U in plant, unlawful, in view of fact that interrogator was Ee's superior and conversation occurred in shop and dealt with U activity)

Levingston Shipbuilding Company **249 NLRB No. 001**
(investigatory interrogation of alleged threat of one Ee by another which arose out of circumstances surrounding U's organizing campaign, unlawful where E failed to observe necessary safeguards or assure Ees that participation in interrogation was on voluntary basis w/o prospect of reprisal)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

Conagra, Inc. **248 NLRB No. 085**
(supervisor's response *just sign a U card* to remark of Ee that if she didn't hurry she (Ee) would be fired, not unlawful, since supervisor's reply not type of comment that would prompt response even though Ee replied she had signed card)

Permanent Label Corporation **248 NLRB No. 021**
(E questioning of Ee regarding U organizational activity violative, notwithstanding it may have been done in friendly manner)

Permanent Label Corporation **248 NLRB No. 021**
(questioning Ees as to why they wanted U violative notwithstanding Ees questioned had openly declared pro-U sympathies)

Paceco, A Division of Fruehauf Corporation **247 NLRB No. 166**
(on remand Bd adhered to finding of unlawful interrogations during critical period based on timing of interrogations and lack of evidence of valid purpose for questioning Ees on U sentiments)

The Saloon, Inc. **247 NLRB No. 156**
(remark not in the form of an interrogation but of a character likely to elicit a response revealing Ee's feelings about U held to have had practical effect of an interrogation and was unlawful)

Boyle-Midway, Inc., Division of American Home Products Corp. **247 NLRB No. 124**
(systematic interrogation about U with individual Ees in locus of authority, violative, where purpose of questioning was not revealed and no assurance against reprisals were made)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ee had heard anything about anyone trying to organize U in plant and how Ee felt about it, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee who was member of U organizing committee if he had heard anything about anyone trying to organize U in plant, and what Ee thought about it, and upon Ee replying he was undecided stating he hoped Ee was not making mistake, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ee had a U card for him to sign, unlawful, notwithstanding question was asked in joking manner, in view of E's hostility to U)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**

Production Plated Plastics, Inc. **247 NLRB No. 076**

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(asking Ee if anyone was bothering him and if he was satisfied with job, violative since inquiry related to and concerned Ee's U activity)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(asking if Ee had signed U card, how Ee had voted, and if Ee was *with* E, unlawful)

Galax Apparel Corporation **247 NLRB No. 026**

Checker, Inc., d/b/a Checker Cab Company **247 NLRB No. 019**
(interrogating Ees as to whether they would cross picket line, violative)

Falconer and Sons **JD-(SF)-232-80**
(E's asking Ee if the Ees talked about U during working hours and whether this Ee would participate in sickout, unlawful)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(supervisor's engaging in interrogation w/o giving Ees assurance against reprisals, unlawful)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(questioning Ees shortly before unlawfully discharging them if they worked for E or for U's business agent, unlawful since question in juxtaposition with discharges may have conveyed notion that U aspect of their refusal to work overtime contributed to discharge decision)

Cashmere Lumber Company **JD-(SF)-93-80**
(although supervisor's conduct would have been unlawful in organizational setting, his asking Ee why he sought to involve official of parent organization in U's problems at plant, accompanied by statements that Ees did not need U as long as he held his management job and that he would *take care of Ees,* not unlawful, notwithstanding supervisor's *take-care-of* statement since, in context of settled bargaining relationship with U, there was nothing in supervisor's remarks or surrounding circumstances from which Ee could have perceived a threat or promise)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(inquiry into Ees' pro-U sentiment and inquiry into reasons for that sentiment held coercive interrogation as supported by record evidence)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**

N.L.R.B. v. Jarva Incorporated **623 F.2d 483 (C.A. 6, 1980)**
(supervisor predicting to Ee and to another Ee that because Ee was instigator of U that Ee would be head committeeman once U got in, not unlawful, since statements made jokingly and Ees stated they felt no coercion)

N.L.R.B. v. Franklin Property Company, Inc., d/b/ a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

Huron Copysette, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**
(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(inquiry by guard at plant gate of Ees displaying sign in their vehicle, urging boycott of E's product, whether they were sympathetic to striking Ees and stating that if they were they shouldn't be working for E, unlawful)

5030-4030 Solicitation of grievances

Russ Togs, Inc. **253 NLRB No. 099**
(interrogation as to why Ee had not come to E rather than go to other Ees when Ee learned that he was supposed to be making more money, unlawful)

Riley-Beaird, Inc. **253 NLRB No. 085**
(E unlawfully solicited and remedied Ee's grievance where, after seeing Ee pass out U literature, E asked Ee what was wrong, stated that he would try to solve Ee's problems, and thereafter remedied Ee's complaint about loss of overtime)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's asking Ee what Ee's grievances were and suggesting that Ee take these grievances to higher management, unlawful solicitation of grievances with view towards adjustment)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ees at group meeting whether he had cleared up problems they had been having with supervisors constituted unlawful interrogation and adjustment of grievances)

Americana Health Care Corporation of Ohio d/b/a Barberton Manor **252 NLRB No. 057**
(soliciting and remedying Ee grievances in attempt to deter U's organizational campaign, violative)

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter asking Ees to discuss problems and setting up of joint E-Ee committee, thereby soliciting grievances from Ees, unlawful),

Brooks Cameras, Inc. **250 NLRB No. 116**
(questioning of Ee concerning what Ees wanted on day after U made its bargaining demand, unlawful)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(E's vice-president asking Ees, during period of U campaign, *what their problems were* and impliedly promising to remedy them held violative)

St. Francis Hospital **249 NLRB No. 017**
(at E sponsored grievance meeting with Ees during critical period, E, in response to C, stating that he would *take a look and see what we can do* violated Act because he held out prospect of remedial action)

Conagra, Inc. **248 NLRB No. 085**
(holding meetings during U campaign at which Ees were told by plant manager to bring any problems to him which they could not work out with their supervisors, unlawful, where meetings of this type were unusual)

Leeson Electric Corporation **247 NLRB No. 203**
(E holding meetings with varying Ee representatives chosen at random, unlawful, since initiated during U campaign in order to solicit grievances)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation where, in course of anti-U campaign meeting, E's attorney asked Ees to discuss their grips against E; the attorney was soliciting grievances and E did nothing to rebut presumption that it was promising to remedy such grievances)

5030-4030—Cont.

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if she had signed U card, unlawful, where supervisor called Ee's attention to E's notice regarding withdrawal of U cards, and in context of E's hostility to U and supervisor's reiteration of hostility)

Houston County Electric Cooperative, Inc. **247 NLRB No. 087**
(asking Ee during U campaign *what the problems were*, unlawful, absent any previous policy of periodically soliciting grievances; *such activity ... occuring in midst of U campaign inherently constitutes implied promise to remedy grievances and violates Section 8(a)(1)*)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(plant manager's solicitation of grievances and his promises to resolve them, unlawful where they were attempt to persuade Ees to abandon U)

Palomar Transport, Inc. **JD-(SF)-158-80**
(solicitation of grievances unlawful, where solicitation was not shown to have been established practice and impliedly held promise of rectification, thereby obviating need for U representation)

Crown Central Petroleum Corporation **JD-(SF)-135-80**
(asking Ees to talk to management about their problems not violative notwithstanding statement made during U campaign where it was longstanding company policy for Ees to take their problems to their supervisors)

Broad Street Lincoln Mercury, Inc. **JD-208-80**
(soliciting grievances from Ees, violative)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(ct could not disregard finding of Bd that creation of telephone hot line was intended and understood to be solicitation of grievances and implied promise that those grievances would be remedied and was unlawful)

5030-4040 Concerning union membership, adherence or activities of others

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee why another Ee had become U supporter, unlawful)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(—*how many people in that department were for U?* violative)

Western Truck Services, Inc. **252 NLRB No. 096**
(asking Ee whether *we really need the U.* violative)

St. John Medical Center **252 NLRB No. 077**
(inquiry as to identity of instigator of U activity, violative)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(although Ee called E on telephone and brought up subject of U activity, E's subsequent interrogation over telephone, unlawful, where E went beyond legitimate inquiry by pressing Ee for names of Ees involved in U and by devoting most of long conversation to questions about U)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E at meeting he called after being notified U had claimed majority asking Ees how many of them had signed up with U, unlawful, in context of extreme animus displayed by E at meeting, notwithstanding Ees did not answer)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present at subsequent interview with E's president)

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(questioning of Ees about need for U by member of firm employed by E to conduct attitude survey among Ees, unlawful, where questioning was not isolated matter or one impact of which would be lost upon Ees in view of formalization of Ee meetings with members of firm, coupled with instruction to Ees to attend meetings and voice their grievances and feelings)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(supervisor's asking Ee if she knew if there were any Ees that had been talking about U, unlawful, notwithstanding E's claim that no violation existed because conversation occurred in working area and not in private office, supervisor did not press inquiry, and occurrence was isolated incident)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(interrogation as to identity of persons making statements at U meeting, unlawful)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ee to let him know if he heard anything about Ee organizing campaign, violative)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ees who were ring leaders in U drive, how the vote was going, and how much U was going to ask for, violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(asking Ee if he knew which Ees signed U cards and if he had signed a card, violative)

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(questioning Ee about U's organizing effort by low level supervisor violative where E's higher-level management had clearly indicated their anti-U feelings and had discharged supervisor who had become involved in U activity)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(interrogation of Ees as to whether they knew anything about Ees signing U cards, violative)

5030-4060 Concerning union meetings

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee why Ee held U meeting in her home if Ee did not have anything to do with U, unlawful)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee if Ee had stated at U meeting that she had received only 1 merit raise while employed by E and upon Ee's denial she had made statement informed Ee several witnesses had heard her and that in effect Ee was saying that E was a terrible place to work and asked if Ee wanted U, unlawful)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(supervisor asking Ee whether new hire attended U meeting, unlawful)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's interrogation of Ee as to whether she had attended U meeting, unlawful, in view of subsequent statements creating impression of surveillance and threatening Ee by claiming that U would cause loss of Ee's job)

Excavation-Construction, Inc. **248 NLRB No. 081**
(supervisor's interrogation of Ees concerning prospective U meetings w/o assurances against reprisals violates Act)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(E vice-president's asking bargaining unit Ee if he was going to U meeting and then telling Ee that he had ways of finding out about U meeting, that he had latest information about U, and that he intended to ascertain which Ees were involved, violative)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(asking Ee if she knew purpose of scheduled U meeting, violative, given absence of any explanation by E of its interest and lack of assurances that E would not retaliate against Ee because of her U activities)

5030-4070 Concerning employee group meetings

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(supervisor's *party* remark to Ee who had attended gathering at fellow Ee's home at which U representative was present, and his question as to who was there, not unlawful, where supervisor's remark was more of a salacious jibe than interrogation about suspected U activity, and there was no evidence that remark and question were oriented in U considerations)

5030-4080 Concerning other union activities

United States Postal Service **252 NLRB No. 014**
(physician's remarks about U, made during physical examination of Ee, and his questioning of Ee as to why Ee wanted U representative with him at physical examination, not unlawful where, although physician was supervisor of nurses, he was not acting in supervisory capacity as to Ee being examined, and his question and remarks that Ee deserved discipline, which were due to his personal irritation, could neither be attributed to E nor reasonably be construed as threat of retaliation)

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(conversations of E's board member, father, with unit Ee, daughter, concerning current levels of U support, not violative, where no interference or coercion proved)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor instructing Ee to admit to E's president that she had signed U card and was conversant with U's organizing efforts, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ees were paid $5 to sign U cards and inquiring if Ees knew it would cost $3 to get them back, violative)

Cashmere Lumber Company **JD-(SF)-93-80**
(although supervisor took Ee to lunch as a business propositon at least, in part, to delve into U situation at plant, and occurrence was not a chance or

5030-4080—Cont.

casual undertaking and came soon after supervisor tried to influence Ee's intra-U activities, supervisor's conduct held not unlawful since he neither said nor did anything from which a job-related threat or promise could be inferral)

Norem Company, Inc. **JD-847-79**
(asking Ee if she had heard any rumors of U activity, not unlawful, since isolated incident and at time of questioning there was no U activity at which questioning could be aimed; further, *it is questionable that asking Ee if she had heard any rumors of U activity, as opposed to asking if there was any U activity... is violation*)

5030-4090 Concerning protected activities

Piezo Technology, Inc. **253 NLRB No. 122**
(question to Ee who was on U organizing committee as to why she thought company needed U, not unlawful, where question was asked in course of meeting between E and Ee which became discussion of pros and cons of unionization and interrogation was not meant other than as a rhetorical question)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's asking Ee why U was being formed, unlawful, in context of conversation where supervisor also made statements which created impression of surveillance)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement at group meeting that he had talked to various people to find out what was going on about U and was unable to do so and thus was calling meeting of Ees same questions, unlawful)

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers. Local 281, a/w Teamsters) **250 NLRB No. 174**
(sales manager's questioning of Ee and his admonition to her that her walkout efforts were *not nice thing to do,* unlawful, since they were designed to coerce her to abandon her determination to walk out)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(asking Ees why they had not stopped Ee from filing certain papers with Bd)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(interrogating Ees as to who was leader in lodging Cs about supervision, unlawful)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(interrogating Ees as to whether they had signed letter and - if they had - why they had done so and whether they were aware that it suggested supervisor's discharge, violative, where interrogation constituted integral part of E's program, found unlawful herein, to discharge persons who signed the letter)

B. N. Beard Company **248 NLRB No. 016**
(interrogating Ees as to whether they intended to strike, closely followed by threat to discharge them if they did so, unlawful)

Sherwood-Trimble Medical Building **247 NLRB No. 160**
(interrogation of Ee concerning charges that Ee filed with Bd w/o complying with safeguards, unlawful)

Datacomp Corporation, A Division of Herbick and Held Printing Company **JD-594-80**
(E's limited interviews with alleged discriminatee's co-workers as to his charges of racial discrimination against E, overtime, disruptions and his work performance, not unlawful where investigation consisted of interviews with grieving Ee and co-Ees who presumably might have had relevant information, subject matter of interviews parallaled scope of claims, and conduct of investigation, when viewed objectively, was free of any suggestion of threat or intimidation)

Round Table Enterprises Inc. t/a Thrift T Mart **JD-(NY)-62-80**
(asking Ee about whether he had heard any U talk, violative)

Falconer and Sons **JD-(SF)-232-80**
(E's asking Ee if the Ees talked about U during working hours and whether this Ee would participate in sickout, unlawful)

Peschke Packing Company **JD-(NY)-33-80**
(interrogation of Ee as to why he had filed ULP charges against E and threats to make it rough for him, unlawful)

Roadway Express, Inc. **JD-281-80**
(superintendent questioning of Ee as to why Ee had called U business agent about allegedly unsafe truck and instructing Ee to call superintendent directly, lawful, where superintendent was giving instruction to newly assigned driver as to proper procedure to follow in event of breakdown and superintendent did not forbid Ees from discussing safety matters or complaints with U officials)

Melissa Marie Fashions, Inc. **JD-177-80**
(violation where in context of unlawful discharge of strikers, E questioned Ees about whether they had complained to Bd)

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**
(enforcement denied where ct adhered to standards set down in *Bourne* in regard to whether E's interrogation of Ee violated 8(a)(1) and found that record in proceedings lacked substantial evidence to support conclusions contrary to those of ALJ, or to support view that interrogation in any way interfered with Ee rights)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(company president's asking Ee, during pre-election E campaign meeting with Ees, if Ee had written anonymous letter criticizing E's general manager, violative)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(asking Ees during disciplinary hearing why they had displayed sign in their vehicle, urging boycott of E's product, unlawful, where hearing had a cross-examinatin atmosphere and E focused on possibility Ees were sympathetic to striking Ees)

5030-5000 Questioning of former employees

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(requiring discriminatees entitled to reinstatement to be interviewed before they were allowed to return to work held violative where such requirement had no legitimate business justification)

5030-7000 Interrogation concerning employee or others involvement in Board's processes

Gladieux Food Service, Inc. **252 NLRB No. 106**
(questioning Ee as to how she intended to vote in coming election, violative, since such questioning tends to undermine principle of the secret ballot)

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**
(asking Ee if he intended to withdraw ULP charges he had filed violative)

Certain-Teed Insulation Company **251 NLRB No. 208**
(asking Ee how *our team would vote in the election* and how Ee himself would vote, violative)

Certain-Teed Insulation Company **251 NLRB No. 208**
(violation where at E's request, psychologist from E's management consulting firm interviewed Ees after election about *their feelings and preceptions in relationship to the company* and in the course of such interviews asked Ees how they voted in election)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(questioning Ee regarding investigation by Bd agent)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E who asked Ee about identity of Ees who testified against E during investigation of charges violated Act)

The Nestle Company **248 NLRB No. 106**
(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

Universal Service Contractors **247 NLRB No. 097**
(supervisor's questioning Ee regarding affidavit he gave Bd agent violative)

Albertson's Inc. **JD-(SF)-104-80**
(questioning Ee about Ee's participation in Bd investigation, unlawful, since E did not show that questioning was for legitimate purpose and there was no requisite showing of voluntariness to Ee's participation in questioning)

Albertson's Inc. **JD-(SF)-104-80**
(discipline of Ee for not meeting production quotas, not unlawful, notwithstanding fact that discipline followed closely in time unlawful interrogation of Ee; discipline was nothing more than routine and innocuous exercise of E's authority)

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1980)**
(Bd's finding that E's manager's inquiry among Ees as to who was filing charges in regard to change in job requirements was unlawful interrogation reversed since there was no finding by Bd or substantial evidence on record that statement was motivated by anti-U animus, that it was made in attempt to seek information upon which E would take action against pro-U Ees, or that it was made in coercive or hostile setting)

5030-8000 Permissible to elicit information necessary in preparation of trial or hearing

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E violated 8(a)(1) as well as 8(a)(4) where E, in furtherance of its state civil suit against Ees, obtained alleged discriminatee's deposition concerning matters relating to E's defenses in pending Bd ULP proceeding and inquired of fellow Ee whether supervisor involved in alleged ULPs knew that Ees were trying to organize; since it could reasonably be expected that Ee would, as she did, tell alleged discriminatee of conversation with E, question had its mexus in taking of deposition resulting from filing of state proceeding which was also found unlawful herein)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(taking Ees' depositions in state civil lawsuit, filed by E against them for libel and wrongful interference, and involving questioning in depth regarding Ees' U activities, unlawful, where Ees were not deposed voluntarily,

5030-8000—Cont.

there were no assurances that reprisals would not be taken, questions far exceeded relevance to civil lawsuit, and purpose of questioning which was discovery of evidence for pending Bd hearing, was not conveyed to Ees)

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's asking Ees for their signatures on ptn for purpose of supporting E's discharge of Ee which was subject of ULP allegation and grievance procedure not unlawful as *privileged investigative gesture*, since supervisor's conduct did not discourage Ees in exercise of their statutory right nor did it have such effect, and it was unlikely, particularly in view of supervisor's assurances against reprisal, that his presentation of ptn would have tended to impair Ees' ability to testify in any ensuing grievance or Bd proceeding)

5030-8001 Generally

Douglas & Lomason Company **253 NLRB No. 039**
(allegation that attorney for E questioned Ee about her testimony w/o giving her necessary prerequisite admonitions and safeguards dismissed where Ee did not testify that attorney interrogated her, attorney twice told her that she was not required to talk with him, that nothing would happen to her employment if she did or did not testify)

Anserphone, Inc. v. N.L.R.B. **632 F.2d 4 (C.A. 6, 1980)**
(no evidence to support conclusion that interviewing few Ees by E's representatives prior to ULP hearing constituted coercive interrogation; it is well established that E is privileged to interview Ees for purpose of discovering facts relevant to issues raised in ULP case to aid in preparation of case)

5030-8025 Employees must be apprised of purpose

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(interrogation of Ees by E's labor relations consultant violative where he neither advised them of purpose of questions nor indicated to them that participation was voluntary)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(interrogating Ee concerning disclosures made to Bd agent during investigation of ULP charge, violative)

5033 HARRASSMENT OF UNION ADHERENTS OR OTHER EMPLOYEES

5033-0100 Generally

General Telephone Company of Michigan **251 NLRB No. 099**
(Bd looks to effect such conduct may reasonably tend to produce rather than subjective reaction that is actually engendered)

5033-3300 By employees

General Telephone Company of Michigan **251 NLRB No. 099**
(disciplining Ee for harassing two other Ees by various derogatory, threatening and vulgar remarks and spitting at one of them for their not having participated in strike held not violative where GC had not established that conduct was *prima facie* or, *in fact*, protected activity)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(telling Ee that if she signed U card *they would probably be on your back all the time* held unlawful threat of harassment)

5033-5000 By supervisors

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge for Ee's alleged disruptive behavior and generally *poor attitude* which caused supervisor to *watch* her, held violative where Ee's propensity to engage in protected concerted activity caught attention of E which was motivated to engage in *special surveillance* of Ee's work performance and to seize upon her first alleged transgression as pretext to terminate her)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(supervisor chiding active U soliciter for conduct tolerated by E prior to pre-election period held violative)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(instructing Ees not to speak with reinstated Ee and to stay out of her department, held violative)

Peavey Company **249 NLRB No. 110**
(supervisor harassing Ees by following them around, unlawful)

Custom Coating & Laminating Corporation **249 NLRB No. 117**
(threatening Ee with discharge if he continued to speak with other Ees during work time violative where Ee's job required him to speak to other Ees and Ee was well known U adherent)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(foreman's action in throwing U grievance in trash container with comment, *this is what I think of your damn U* unlawful)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**
(conversation in which supervisor asked Ee why she was wearing U button because she had earlier expressed opposition to U and told Ee that she could do as she wished but that she was making ass out of him because he always stuck behind her and so did management, held not to constitute harassment)

5033-8300 By employer

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(post-strike harassment and intimidation of striker by following them and keeping tighter control on their workplace movements, unlawful)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(harassment of Ee who was U official during discussion concerning when Ee would be paid, violative)

Neckover Trailer Manufacturing Company **JD-256-80**
(E's report to sheriff and resultant investigation of Ee following his confrontation with supervisors at plant held not harassment or intimidation of Ee and not motivated by Ee's U activity but by Ee's characteristic traits of temper and belligerent conduct toward authority)

5036 CHANGES IN CONDITIONS OF EMPLOYMENT OR THREATS THEREOF

5036-0100 Generally

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(claim that improvements were made during U organizing campaign for legitimate business reasons such as fostering Ee productivity is no defense unless timing of announcement or implementation of improvements is explained)

5036-0117 Violation where action motivated in part by protected activity

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(discharge of Ees, unlawful, where motivated, at least, in part by their participation in walkout in protest against E's change in their duties, where E commented that Ees laid themselves open to discharge for walking off job, and termination reports indicate discharges were result of both insubordination and having walked off job which constituted protected concerted activity; E's contention that Ees' refusal to carry out E's specific orders was sole cause of discharge, rejected)

5036-0800 Timing

Aztec Manufacturing Company **JD-(SF)-92-80**
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(threats to hire new Ees immediately after U representative requested recognition held violative where evidence on record supported conclusion that Ees could reasonably infer from timing that such threats were directed towards Ees' decision to join U)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(threats to change job assignments of certain Ees immediately after U representatives requested recognition held violative where evidence on record supports conclusion that Ees could reasonably infer, due to timing, that threats were directed towards their decision to join U)

5036-0812 During pendency of Board proceeding

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(suggesting to Ee that she could disregard Bd subpoena, encouraging her not to appear at Bd hearing and threatening her with reprisal unless she testified favorably to E, unlawful)

5036-0820 Before petition filed

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

5036-0825 During critical pre-election period

Blue Bird Body Company **251 NLRB No. 196**
(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

Blue Bird Body Company **251 NLRB No. 196**
(audio slide presentation to all eligible voters, violative where remarks of Ee participants in presentation impliedly threatened that U adherents would eventually be discharged for pretextual reasons)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(wage increase granted during critical preelection period, unlawful, where announcement was not made long before U's organizing campaign as claimed by E, and increase was not conferred consistent with past practice but was unprecedented for time of year it was granted)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

5036-1700 Concessions limited to employees outside bargaining unit

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

5036-3300 Employer's knowledge of concerted nature of activity

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**
(ct agreed with Bd that E discharged Ee at least in part because of Ee's protected concerted activity but remanded for finding on issue of whether E knew that activity was concerted)

5036-5000 Employer's knowledge of protected activity

Jim Causley Pontiac, Division Jim Causley, Inc. **253 NLRB No. 101**
(Ee who filed complaint with State Health Department engaged in protected concerted activity and E found to have knowledge of concerted nature of activity where E was aware State complaint form filled out with plural pronoun *we* where complaint form identified area of shop where discriminatee and other Ee worked, listed paint fumes as hazard and in past many Ees had complained to E about fumes and evidence that many Ees had discussed poor ventilation system, complaining to management)

Leisure Lodge Nursing Home **250 NLRB No. 134**
(discharge of Ees who were attempting to redress grievances violative; moreover discharges would have been violative even if E merely thought they were trying to address grievances)

Aztec Manufacturing Company **JD-(SF)-92-80**
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

5036-6700 Forms of changes in conditions of employment

5036-6704 Wage or bonus withheld

Woonsocket Spinning Company **252 NLRB No. 163**
(telling Ee he might have received bonus if he had not voted for U)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(withholding scheduled pay increase w/o specific announcement because of Ees' U activities violative, notwithstanding Ees were unaware of denail of increase until E announced that it would grant increase; moreover, fact that E acted on advice of its attorney does not relieve it of liability)

5036-6706 Changes in reprimand system

International Business Systems, Inc. **247 NLRB No. 102**
(violation where after U organizational campaign E *instituted a procedure for issuing warning letters for work errors and violations of work rules*)

5036-6708 Denial of promotion

National Steel Products **252 NLRB No. 120**

Coating Products, Inc. **251 NLRB No. 170**
(refusal to promote Ee to leadman where he was already performing work until after U campaign violative)

5036-6709 Reduction in wages

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**
(enforcement denied where ct found that record of proceedings lacked substantial evidence to support conclusions contrary to ALJ; ct rejected argument that E's statements had *tendency in the totality of circumstances to intimidate* Ees or Ees feared that they would lose two hours *show up* pay or be laid off)

5036-6710 Reduction or withdrawal of benefits

Riley-Beaird, Inc. **253 NLRB No. 085**
(E's message to Ees that it had right to demand reduction of benefits at bargaining table held implied of threat to reduce benefits if Ees selected U)

5036-6712 Denial of wage increase

Northern Telecom, Inc. **250 NLRB No. 085**
(denial of merit increase)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(failure to give normal periodic increase after 3 months satisfactory service so as to give impression that it was U's fault, unlawful)

Boyle-Midway, Inc., Division of American Home Products Corp. **247 NLRB No. 124**
(violation where E told Ees that there would be no raises granted because of *U activity*)

Tartan Marine Company **247 NLRB No. 073**
(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

5036-6713 Withholding of expected wage increase or benefit

Chester Valley, Inc. **251 NLRB No. 190**
(withholding of wage increase assertedly because of E's uncertainty about his legal position in face of U activity, not unlawful, where GC failed preponderantly to show that increase was withheld because of Ees' U activity and because of U's presence, rather than in order to give E reasonable time in which to consult with counsel which E did with reasonable promptness and then received counsel's advice w/i reasonable time, and acted with reasonable promptness on such advice)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(withholding scheduled pay increase w/o specific announcement because of Ees' U activities violative, notwithstanding Ees were unaware of denail of increase until E announced that it would grant increase; moreover, fact that E acted on advice of its attorney does not relieve it of liability)

5036-6714 Change in absenteeism rule for reporting

Charge Card Association **247 NLRB No. 119**
(institution of policy requiring doctor's note after 1-day absence violative where rule was instituted after Ees engaged in protected strike activity)

5036-6715 Change in policy regarding observance of hours of work

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(change in rules requiring written note of explanation for tardiness, unlawful, since resulted from E's efforts to discourage U membership or support)

5036-6717 Deduction of union dues, fees or assessments

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**
(checkoff of *assessments* though specifically permitted in bargaining agreement and had been done in past nevertheless held unlawful because checkoff authorization cards did not list *assessments* as item that could be checked off)

5036-6718 Discipline or warnings thereof

Piezo Technology, Inc. **253 NLRB No. 122**

5036-6718—Cont.

(issuing verbal warning to U adherent for allegedly creating disturbance in hallway in course of informal meeting with E, violative, where there was no evidence that disturbance was caused in *a working area* where Ees were present)

Joshua's, Inc. d/b/a Fitzwilly's **253 NLRB No. 082**
(implementation of warning system designed to coerce and restrain Ees in violation of their Sec. 7 rights)

United States Steel Corporation **253 NLRB No. 083**
(threat to send home Ee, who was away from his work station discussing possible OSHA violation, if he was ever caught reading OSHA booklet on company time, unlawfully broad, since company time includes nonworking as well as working time)

Republic Die and Tool Company **252 NLRB No. 092**
(issuing written warnings to Ee because he filed contractual grievance, violative)

United States Postal Service **251 NLRB No. 033**
(issuance of written warnings for alleged insubordinate conduct during and after informal grievance meeting, violative, where conduct was not *opprobious* or *extreme* and Ees' continued discussion of grievance following meeting was part of *res gestae* of grievance meeting which had no consequential disruptive effect since Ees did return to work in response to E's direct order)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(issuance of an *only* warning to returning striker with the next incident subjecting him to immediate dismissal after a particular incident unlawful, where it was E's policy to give first or second warnings)

United States Postal Service **250 NLRB No. 156**
(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

United States Postal Service **250 NLRB No. 156**
(threatening U steward during grievance presentation with disciplinary action if he didn't shut up, unlawful)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(threatening attorney Ees with discipline for participating in clerical picket line, and entering notations in their personnel files that they had engaged in such activity, unlawful)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(violation where E issued warning notice to Ee because of complaints to state and federal agencies)

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(written warning issued as enforcement of unlawful no-solicitation rule, unlawful)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(reprimanding Ee who had solicited another Ee who was on work time, unlawful, since was addressed only to prime U adherent and was intended more to impede her U activities than to maintain production and order in restaurant; further, reprimand was to enforce unlawful rule)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff and offered Ee adherent severance pay to induce her to seek other employment)

United Parcel Service **247 NLRB No. 134**
(warning for Ee's refusal to unlock icey trailor door because he considered conditions unsafe, violative)

United Parcel Service **247 NLRB No. 134**
(issuance of reprimands to individual Ee for disobeying orders not to talk at work, unlawful, as discriminatory change in working conditions were instigated because Ee filed grievance with U)

Fall River Savings Bank **247 NLRB No. 088**
(issuance of written warning to Ee for questioning supervisor about calling in Ees for Saturday work w/o following seniority, unlawful)

E. I. Dupont De Nemours and Company **JD-615-80**
(written discipline for Ee criticizing performance of individual members on safety committee and his attempt to have committee poll Ees on question of committee's continuance as structured, violative, where Ee engaged in activity in behalf of his membership on Ees Council which constituted concerted protected activity)

United States Postal Service (Las Vegas, Nevada) **JD-(SF)-214-80**
(violation where E issued warning to Ee because he refused to participate in interview concerning blank spaces on his timecard w/o a representative)

Krafcor Corporation **JD-259-80**
(preelection speech threatening Ees with more severe discipline if they selected U as their representative, including examples referring to Ees in context of incidents for which they would be discharged, held unlawful and election set aside)

Four Rivers Coal Company **JD-209-80**
(violation where supervisor issued letter of reprimand to Ee who, as part of concerted Ee grievance on loss of wages, had voiced dissatisfaction with supervisor's adequacy)

Albertson's Inc. **JD-(SF)-104-80**
(discipline of Ee for not meeting production quotas, not unlawful, notwithstanding fact that discipline followed closely in time unlawful interrogation of Ee; discipline was nothing more than routine and innocuous exercise of F's authority)

Garden State Motors Co. **JD-160-80**
(imposition of disciplinary rules violative where rules were imposed in response to news of U's organizing efforts)

United States Postal Service **JD-(SF)-273-79**
(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

Welco Industries, Inc. v. N.L.R.B. **633 F.2d 217(T) (C.A. 6, 1980)**
(ct held substantial evidence supported Bd's finding that E violated Act by reprimanding and discharging Ee for her use of grievance procedure)

Goodyear Aerospace Corporation v. N.L.R.B. **623 F.2d 476 (C.A. 6, 1980)**
(issuance of absentee warnings, unlawful)

Northern Telecom, Inc. v. N.L.R.B. **618 F.2d 421 (C.A. 6, 1980)**
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(issuing warning to active U supporter assertedly for leaving her station during working hours w/o permission, violative, where Ee had obtained permission from supervisor to leave her station)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(violation where E issued warning to active U supporter allegedly for harassing other women)

5036-6719 Restriction to work area

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(restricting U adherent to work unit violative where normal duties involved areas outside of unit)

Highland Foods, Inc. and Vickelda Industrial Corporation **JD-364-80**
(announced isolation of Ee who was attempting to organize Ees, violative)

N.L.R.B. v. Midland National Life Insurance Company **621 F.2d 901 (C.A. 8, 1980)**
(restriction of Ee to her desk, after being reprimanded for engaging in U activities, until after election, and threat to discharge her if she left that immediate area, unlawful)

5036-6720 Discharge

Pease Company **251 NLRB No. 080**
(discharge of Ees for refusing to work overtime, as result of unilateral implementation of new disciplinary program with respect to overtime, unlawful, where there was no agreement, express or implied, that Ees who agreed to work overtime and did not do so, or that Ees who refused overtime, could be disciplined)

Pease Company **251 NLRB No. 080**
(discharge of Ees for resisting forced overtime, an item of importance to all Ees' was reasonably calculated to impress on other Ees that Ee was determined to have its way on overtime equalization whether U agreed or not, thereby indicating to them that U representation was futile)

Hawthorne Mazda, Inc. **251 NLRB No. 038**
(discharge of Ee engaged in protected concerted activity when terminated for criticism of management, unlawful, where criticism occurred in manager's office rather than on shop floor where it could have affected manager's status in eyes of other Ees; manager, in effect, converted meeting into informal grievance session; and Ee's remarks were not so indefensible as to render him unfit for further service nor were they made simply to ridicule

5036-6720—Cont.

or denigrate management but were offered in connection with new pay system to which Ees were objecting)

Giuliem Apparel Corp. **JD-162-80**
(discharge of Ee for fear that if Ee attempted to return to work, other Ees would think E was forcing her to return and would engage in work stoppage, unlawful)

5036-6720-0100 Generally

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(Ee held discharged where foreman informed Ee to *Go home, punch-out, that's it* after Ee complained about safety conditions and refused to work with allegedly unsafe machine; E's contention that Ee quit was pretext to conceal unlawful discharge)

5036-6720-0150 What constitutes discharge

Pink Supply Corporation **249 NLRB No. 091**
(no discharge of economic strikers proved where E told strikers' spokesman that it would have to act as though they were quitting and find replacements and -- when spokesman denied Ees were quitting -- asked what spokesman would call their action and what E was supposed to do; spokesman then volunteered that Ees would come in and clean out their desks which they did next day; E did not create ambiguous situation by wrongdoing, did not unequivocally refuse to permit strikers to return to work or make further inquiries into its intentions futile; and each party was equally able to rectify the uncertainty)

Emblematic Jewellry Products of U.S.A., Inc. **JD-814-79**
(collecting timecards of Ees as they punched out prior to quitting time, held not discharge, particularly where E's owner asked Ees if they were quitting as they punched out and subsequently they were called and asked to return to work)

5036-6720-3700 For refusal to cross primary picket line at own employer's premises

N.L.R.B. v. Rainbow Tours, Inc., d/b/a Rainbow Coaches **628 F.2d 1357(T) (C.A. 9, 1980)**
(discharge of strikers for refusing to cross picket line, violative where picketing was not unlawful, discharges were motivated by anti-U animus, and business preservation doctrine did not apply since E is only permitted to replace strikers not discharge them)

5036-6720-4300 Constructive discharge

J. J. Security, Inc. **252 NLRB No. 180**
(requiring Ees to sign resignation forms or else stop seeking improvements in their working conditions violative)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(Ees who refused to work at reduced piecework rates constructively discharged and fact that they packed up their tools before they left not controlling)

Redlands Christian Migrant Association **250 NLRB No. 027**
(violation by constructively discharging strikers where E gave them choice of either quitting or giving up strike and supporting strike leader who had just been discharged, and strikers got up and left with strike leader)

General Meats, Inc. **247 NLRB No. 153**
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

Charge Card Association **247 NLRB No. 119**
(striking Ees who refused to return to work because of E's violative conduct of placing them on probationary status found to have been constructively discharged)

5036-6720-5000 Strikers

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(E who sent telegram to ULP strikers informing them of their discharges violated Act, notwithstanding 5 days later he sent another telegram rescinding discharges)

Inta-Roto, Inc. **252 NLRB No. 111**
(E's notification to ULP strikers that they had been permanently replaced is illegal threat of permanent replacement)

Huron Dressed Beef, Inc. **252 NLRB No. 031**
(discharge of Ees for acting as spokesmen for other Ees and for engaging in economic strike, unlawful)

Redlands Christian Migrant Association **250 NLRB No. 027**
(discharge for inducing co-workers to join and for leading economic strike, unlawful)

Redlands Christian Migrant Association **250 NLRB No. 027**
(violation by constructively discharging strikers where E gave them choice of either quitting or giving up strike and supporting strike leader who had just been discharged, and strikers got up and left with strike leader)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(discharge and refusal to reinstate Ees unlawful, since Ees were economic strikers who were subject to permanent replacement but not to discharge)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**
(discharging Ees because they engaged in strike to protest wages, violative)

B & F Turgeon, Inc. **JD-274-80**
(discharge of economic strikers at beginning of strike violative where it took place before permanent replacements had been hired)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(E's telling economic strikers who had requested to return to work that they had been replaced and did not have a job, held not sufficient to sustain allegation of unlawful *discharge;* higher management of E never utilized discharge terminology, *Cf. Ridgeway Trucking Co.,* 243 NLRB No. 160)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. **619 F.2d 153 (C.A. 1, 1980)**
(Ees' strike over discharge of supervisor not protected activity where protest was not over actual conditions of employment of Ees; none of Ees who protested gave slightest indication that discharged supervisor's assistance to their unionization efforts motivated their protest)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. **619 F.2d 153 (C.A. 1, 1980)**
(ct held there was no substantial evidence to support Bd's finding of nexus between Ee protest over discharge of supervisor and Ees' legitimate interests)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(discharged doctors who had struck w/o notice in sympathy with health care institution Ees denied backpay for period of discharge by ct which held their picket-line statements improper and, unlike their sympathy strike, unprotected)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**
(contrary to Bd, ct held discharge of two Ees under mistaken belief they had engaged in strike misconduct, not unlawful, since Ees had participated in illegal wildcat strike and record evidence does not substantially support conclusion that E condoned or otherwise forgave Ees for their illegal conduct)

N.L.R.B. v. Rainbow Tours, Inc., d/b/a Rainbow Coaches **628 F.2d 1357(T) (C.A. 9, 1980)**
(discharge of strikers for refusing to cross picket line, violative where picketing was not unlawful, discharges were motivated by anti-U animus, and business preservation doctrine did not apply since E is only permitted to replace strikers not discharge them)

5036-6720-5900 Of supervisor as integral part of conduct aimed at discouraging exercise of Sec. 7 rights

Pennypower Shopping News, Inc. **253 NLRB No. 011**
(supervisor included in reinstatement and backpay order, since E's conduct, including discharge of supervisor, was part of pattern of conduct aimed at coercing Ees in exercise of Sec. 7 rights)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

Tribal American Consulting Corporation **JD-(SF)-314-80**
(discharging supervisor because she refused to issue reprimands to U supporters for purpose of building record to justify discharge of U supporters, violative)

5036-6720-7300 Protesting unsafe conditions

Service Machine & Shipbuilding Corp. **253 NLRB No. 088**
(discharge of welders for refusing to work in the rain, unlawful; Ees' concern was about safety and health)

Irvin H. Whitehouse & Sons Company **252 NLRB No. 140**
(discharge of Ees who refused to work because of safety hazards violative where contract did not contain no-strike provision)

The Motor Convoy, Inc. **252 NLRB No. 175**

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(discharge of Ee who alone complained about safety conditions and refused to operate allegedly unsafe machine, unlawful notwithstanding Ee did not invoke contractual grievance procedure)

5036-6720-7300—Cont.

Pay-Wood Industries, Inc. **249 NLRB No. 056**
(whether Ee's C about safe working conditions is real or imaginary, it is immaterial to the exercise of Ee's Section 7 rights to so complain)

Lyman Steel Company **249 NLRB No. 040**
(U adherent's quitting job, not only because E denied Ee's vacation request, but also because of E's implicit rejection of Ee's plea for security at his work station, held *constructive discharge*)

Alaga Whitfield Foods, Inc. **JD-504-80**
(discharge of Ee truckdrivers who refused to work because of violence occurring on highway in independent trucker's protest violative, as Ees' activity protected because of safety concerns)

Roadway Express, Inc. **JD-281-80**
(discharge of Ee for refusing to obey order, lawful, notwithstanding Ee's contention that he was discharged for making a safety complaint to Department of Transportation since there was no basis for concluding that E had any knowledge of Ee's compalaint)

Roadway Express, Inc. **JD-281-80**
(discharge of Ee for refusing to drive truck because of asserted safety defects, lawful, where Ee contrived defect which would serve to justify his action in refusing to drive truck)

S & H Fabricating and Engineering, Inc. **JD-149-80**
(discharge for Cs to management about safety of van Ee was assigned to drive, unlawful)

Leo G. Kohls v. N.L.R.B. **629 F.2d 173 (C.A.D.C., 1980)**
(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

5036-6720-7500 For engaging in protected activity

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge violative where E failed to meet its burden that absent Ee's protectd activities her discharge would have occurred)

John Wyke, Inc.; Comanco, Inc.; and Joba Construction, Inc. **253 NLRB No. 118**
(transfer and subsequent permanent layoff of Ee because of efforts on his behalf to obtain rate of pay specified in bargaining contract, violative)

Pennypower Shopping News, Inc. **253 NLRB No. 011**
(E's causing Ees reasonably to believe that they had been discharged, or that their continued employment status was questionable because of their strike activity, unlawful)

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge into suspension and written warning because he refused to drive tractor-trailer which he honestly and reasonably believed to be unsafe held unlawful, since refusal was right Ee was at liberty to exercise under contract even though at time of refusal he had not made any specific reference to contract)

Hotel & Restaurant Employees, Local 28 **252 NLRB No. 158**
(discharge of female Ee for filing sex discrimination complaint with California FEPC, though she acted alone in her charge, and for protesting at Ee meeting about discriminatory wage scale she was getting as compared to male business agents, which received support from other U members attending meeting, violative, since Ee's actions constituted protected concerted activity)

Quik-Pik Food Stores, Inc. **252 NLRB No. 076**
(discharge of Ee allegedly for 3 infractions of E's rules after Ee had played significant role in advancing Ee complaints with other Ees, unlawful where 1 of alleged infractions was pretextual and other 2 infractions took on significance only after Ee participated in advancement of Ee complaints)

Huron Dressed Beef, Inc. **252 NLRB No. 031**
(discharge of Ees for acting as spokesmen for other Ees and for engaging in economic strike, unlawful)

E. R. Carpenter Co. **252 NLRB No. 005**
(discharging Ees for refusing to work in toxic atmosphere in deteriorating moon suits, violative where Ees were concerned not only about unsanitary nature of the suits, but also about holes in suits and possibility that toxic fumes were passing through the holes; Ees had good-faith belief that their working conditions were dengerous and this alone rendered their refusal to work protected)

Alfa Leisure, Inc. **251 NLRB No. 088**
(discharge of Ee for rude conduct violative where conduct occurred in collective-bargaining setting and in fact occurred while Ee was a U representative and was present solely for purpose of bargaining)

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

Pyromactics, Inc. **251 NLRB No. 141**
(discharge of Ee for circulating ptn to obtain time off from work during holiday season, unlawful, since Ee's conduct constituted protected concerted activity; assuming Ee's *quartz flu* statement (meaning Ees as a group would fake sickness so as not to report for work during holiday period) played role in E's decision to discharge Ee, E failed to demonstrate that it would have discharged Ee absent his circulation of ptn)

F. W. Woolworth Co. **251 NLRB No. 152**
(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(statements to U adherent that he should take U or E and that U could not find him any jobs, unlawful threat of reprisal)

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(discharge of Ee for encouraging Ees during nonworking time to engage in walkout if they were required to work beyond 6 p.m. without being provided a meal unlawful)

Jurisearch, Inc. **250 NLRB No. 091**
(discharge of Ee for distributing letter to fellow Ees urging them to organize for improved wages and working conditions, unlawful)

Leisure Lodge Nursing Home **250 NLRB No. 134**
(discharge of Ees who were attempting to redress grievances violative; moreover discharges would have been violative even if E merely thought they were trying to address grievances)

Sullair P.T.O., Inc. **250 NLRB No. 104**
(discharge of Ee unlawful, notwithstanding E's contention that discharge was result of Ee's insubordination and abusive language directed at E's manager in Ee's protest of change in company policy affecting condition of employment, where Ee's language was generally directed toward company and not to E's manager and was type of language used commonly in Ee's shop)

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation, where E threatened Ee with discharge if he posted notice about marathon sponsored by U)

Roadway Express, Inc. **250 NLRB No. 061**
(where some Ees had engaged in unauthorized work stoppage and U steward returned to E's facility after leaving work at end of his regular work day, E's discharging steward for purportedly participating in unauthorized work stoppage held violative notwithstanding E's assumed good-faith belief that steward had participated in work stoppage upon returning to facility; Ee, in his capacity as U steward,was engaged in efforts to end work stoppage when he was discharged)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(discharge of U adherent, unlawful, where for his defense of U in argument in view of E's hostility towards U and U activities)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(discharge of Ees at center for disturbed and displaced youth for their *negativism* about management and its policies and programs, lawful, since Ees' griping not protected in view of lack of concertedness where no express confrontational action taken, and since such concerns regarding quality of program management's perrogative, and Ees' methods were excessive causing disruption and demoralizing residents and other Ees)

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**
(discharge of Ee who acted as spokesman to express dissatisfaction to E about Ees' wages and working conditions, unlawful, where discharge was motivated by *disturbance* created by Ee in registering such dissatisfaction)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(discharge of Ee assertedly for failing to properly perform in his *employee representative* status, violative)

Babcock & Wilcox Co. **249 NLRB No. 099**
(discharge of U president because of E's erroneous belief that, while engaged in protected activities associated with his office of U president, he had instigated wildcat strike and promoted it w/i U, unlawful; in view of such finding and since remedy would be same, Bd found it unnecessary to decide whether or not E also violated 8(a)(3))

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(discharge of Ee for refusal to assist E in defeating claims made by Wage and Hour Division of U.S. Department of Labor, unlawful)

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Han-Dee Pak, Inc. **249 NLRB No. 107**
(violation where E warned Ees and threatened them with discharge for discussing wages with other Ees)

Pink Supply Corporation **249 NLRB No. 091**
(no discharge of economic strikers proved where E told strikers' spokesman that it would have to act as though they were quitting and find replacements and -- when spokesman denied Ees were quitting -- asked what spokesman would call their action and what E was supposed to do; spokesman then volunteered that Ees would come in and clean out their desks which they did next day; E did not create ambiguous situation by wrongdoing, did not unequivocally refuse to permit strikers to return to work or make further inquiries into its intentions futile; and each party was equally able to rectify the uncertainty)

Southwest Detroit Hospital **249 NLRB No. 071**
(discharge of licensed pratical nurse who informed supervisor he was concerned he had not been put in charge of shift and received premium charge pay provided for under contract and that he thought supervisors had made stupid decision by placing nursing technician in charge not unlawful, where discharge for his precipitous decision to leave subsequent meeting with supervisor and reusal to discuss matter further rather than for invoking terms of bargaining agreement)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(discharge of Ee, unlawful, where for her leadership in lodging Cs concerning supervisor)

Colonial Stores Incorporated **248 NLRB No. 142**
(violation where Ee was discharged because she, with her husband's assistance, circulated ptn among Ees protesting E's alleged failure to abide by contract and U's purported failure to enforce contract, and because she displayed signs in her husband's car at E's parking lot protesting E's admitted failure to implement grievance settlement; Ee's protests were found herein to constitute protected concerted activities)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

Bide-A-Wee Home Association **248 NLRB No. 110**
(discharge of Ees who had struck in protest over discharge of supervisor, unlawful where discharge shortly after E had assured Ees that no one would be discharged made other Ees fear for their own job security; discharged supervisor had voiced Ees' objections to E about changes in their working conditions)

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company **248 NLRB No. 069**
(violation where 2 Ees were discharged for refusing to do assigned job, while asking -- in absence of U representation or enforceable grievance procedure -- to see management to complain about being assigned work outside their job classification, and then departing from plant as strikers to protest situation)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**
(violation where U steward was discharged for fulfilling his express contractual responsibility by questioning E's change in practice in not serving unit member sandwich at end of 8-hour shift)

Allied Aviation Service Company of New Jersey, Inc. **248 NLRB No. 026**
(suspension and subsequent discharge of Ee, unlawful where E's actions were caused by Ee's protected activity of sending letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft)

Permanent Label Corporation **248 NLRB No. 021**
(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

Ontario Knife Company **247 NLRB No. 168**
(discharge and refusal to reinstate Ee assertedly for leaving plant w/o permission, unlawful, where walkout was preceded by grievance discussion and was result of protected activity; even if offensive and *off color* remarks by supervisor were proximate cause of Ee's walkout, supervisor's statements must be considered in context of entire conversation, which was clearly protected concerted activity)

Pioneer Finishing Corporation **247 NLRB No. 182**
(remark to Ee that if fellow Ee *went* for distributing leaflets critical of E's safety conditions, then Ee and another Ee *would be next* constituted unlawful threat of discharge)

United Parcel Service **247 NLRB No. 134**
(implied threat of discharge for filing grievance, violative)

First Termite Control Co., Inc. **247 NLRB No. 106**
(discharges for participation in work stoppage in protest of E's treatment of fellow Ee in regard to his pay, unlawful)

Fall River Savings Bank **247 NLRB No. 088**
(discharge of Ee for questioning supervisor about calling in Ees for Saturday work w/o following seniority and for showing other Ees written warning received as result of such questioning, unlawful)

A & R Window Cleaning & Janitorial Services, Inc. **247 NLRB No. 078**
(discharge of Ees who had engaged in work stoppage because of E's announcement that they would not be getting holiday pay for Thanksgiving because they had not been employed by E for 90 days, unlawful, notwithstanding bargaining agreement contained no-strike clause, where at time of work stoppage Ees were unaware of existence of bargaining agreement binding on them)

Yellow Freight System, Inc. **247 NLRB No. 028**
(no violation where driver refused or delayed work assignment and his termination -- whether it be deemed a quit or a discharge -- was based on E's legitimate interest in moving freight rather than, as contended, Ee's assertion of a contractual right)

Meat Cutters, Local 391 **JD-(SF)-304-80**
(discharge of Ees for filing grievance with E over Ee working conditions, unlawful)

Professional Ambulance Service of Middlesex **JD-548-80**
(discharging ambulance EMT attendant for attempting to induce other Ees to strike in support of demand for increased wages, violative, although Ee denied activity and believed that state's Abandonement Law prohibited strikes)

The Gilbert and Bennett Mfg. Co. **JD-578-80**
(suspension and discharge of Ee because of his complaints to E directly and through U about not receiving his overtime backpay under arbitrator's award violative)

Chipmore Manufacturing Co., Inc. **JD-432-80**
(discharge for refusing to work overtime unlawful, since discharges were connected with concerted protected activities in which both Ees had taken part, namely *sick out* in protest against making previously optional overtime mandatory, and with their U activities as well)

Cracker Barrel Old Country Store, Inc. **JD-443-80**
(discharge of Ee who was known to have joined with other Ees in writing letter to higher management complaining about working conditions, unlawful; to extent discharge was based on her refusal to break ranks with other Ees and deal separately with management, discharge was violative as management's attempt to undermine Ees' rights to act in concert)

Peschke Packing Company **JD-(NY)-33-80**
(no violation by discharge of Ee (later reduced to suspension) where reason was found to be Ee's ruining company property rather than belief Ee would complain about supervisor's breach of contract by doing unit work; Ee had previously complained about such contract violations with impunity)

Royal Travel Corporation **JD-306-80**
(discharge of Ees because of their roles as spokespersons for Ee group which sought wage increase, unlawful; contentions discharges because of economic reasons or deficiencies of Ees, rejected)

McLean Trucking Company **JD-368-80**
(threatening Ee with discharge because she had signed U card, violative)

Hotel & Restaurant Employees and Bartenders Union Local 2 **JD-(SF)-178-80**
(discharge of Ee for participation and distribution of leaflet protesting discharge of fellow Ee violative; contention that Ee was discharged for disloyalty rejected)

Shuttle Motor Corporation **JD-327-80**
(discharge of Ee allegedly for inquiring of state agency regarding legality of *back stubbing* i.e. E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not unlawful, since Ee's activity not concerted where *back-stubbing* not matter of common complaint; further, Ee called agency before any other adverse action taken against him and subsequent *back-stubbing* against him rectified)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

Four Rivers Coal Company **JD-209-80**
(discharge of Ee for promoting among Ees their right to cost of living increase and particularly an earlier clothing allowance, unlawful)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(discharges for concerted refusal to work overtime, unlawful)

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's statement to U steward to the effect that if he performed his steward's duties with zeal considered excessive by supervisor, supervisor would make steward's job unpleasant and cause his eventual severance, unlawful)

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Melissa Marie Fashions, Inc. **JD-177-80**
(where Ees had received and complained as a group about bad checks, and had asked E to pay them in cash in future, E's discharge of Ees who collectively walked out in protest against E's paying Ees in check rather than cash, violative)

Standard Bridge Corporation **JD-174-80**
(selecting Ees for termination rather than transfer because of their attempts to become U members, unlawful)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(discharge of Ee because she solicited Ees to see individual she considered to be *boss* rather going through regular channels regarding their complaints held violative, since Ee's conduct was protected activity and was not so flagrantly in derogation of E's *chain of command* or managerial authority as to loose protection of the Act notwithstanding *boss* had severed all official connections with E long before incident since subsequent conduct led Ee to believe he still exerted authority)

Roadway Express, Inc. **JD858-79**
(written warning issued Ee for refusing to drive tractor which Ee believed to be unsafe, unlawful; Ee's refusal to drive tractor amounted to attempt to require E to adhere to safety provisions of bargaining agreement)

Misericordia Hospital Medical Center v. N.L.R.B. **623 F.2d 808 (C.A. 2, 1980)**
(discharge of head nurse (not supervisor) at hospital for participating in preparation of report to accrediting authority cataloging alleged inadequacies of hospital, unlawful, since preparation of report and presentation to authority protected activity)

Tri-State Truck Service, Inc. v. N.L.R.B. **615 F.2d 65 (C.A. 3, 1980)**
(Bd's finding that two Ees were unlawfully discharged for engaging in protected concerted activity reversed in absence of substantial evidence on record as whole that E knew of such concerted activity from telephone conversation with individual Ee who only asked about time and one-half for working on Saturday with no indication that subsequent decision of refusing to work was made on other than an individual basis; furthermore, E's knowledge that two discharged Ees lived together does not infer knowledge of concerted activity)

Welco Industries, Inc. v. N.L.R.B. **633 F.2d 217(T) (C.A. 6, 1980)**
(ct held substantial evidence supported Bd's finding that E violated Act by reprimanding and discharging Ee for her use of grievance procedure)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(discharge of Ees, unlawful, where motivated, at least, in part by their participation in walkout in protest against E's change in their duties, where E commented that Ees laid themselves open to discharge for walking off job, and termination reports indicate discharges were result of both insubordination and having walked off job which constituted protected concerted activity; E's contention that Ees' refusal to carry out E's specific orders was sole cause of discharge, rejected)

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(discharge for requesting increase in salary and pay for overtime, unlawful)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**
(ct agreed with Bd that E discharged Ee at least in part because of Ee's protected concerted activity but remanded for finding on issue of whether E knew that activity was concerted)

N.L.R.B. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, Teamsters **630 F.2d 505 (C.A. 7, 1980)**
(dismissal of Ees who had complained about staff salaries not unlawful, in view of Ees' injection of salary complaints at stewards' meeting which included attendance by stewards not employed by E, admittedly improper use of company CB radio regarding complaints, presentation of wage complaint letters at civic luncheon, general and repeated refusal to follow established, proper and known procedures for presenting wage complaints, coupled with their prior poor work records for which they had been given prior warnings and a *second chance*)

Pelton Casteel, Inc. v. N.L.R.B. **627 F.2d 23 (C.A. 7, 1980)**
(discharge of Ee who complained about rates paid on particular jobs and mandatory overtime, held, contrary to Bd, not unlawful, notwithstanding written warning concerning Ee's *conduct, attitude, attendance and work record* was issued in part on these complaints, where record evidence was insufficient to conclude that complaints about overtime were directed at inducing collective action or that any of Ee's complaints were more than individual gripes)

5036-6720-9000 Preventing employees from engaging in protected activity

Overnite Transportation Company **251 NLRB No. 140**
(discharge of Ee truckdriver and refusal to reinstate him assertedly because he refused to drive, unlawful where Ee was complaining with other Ees about threat to personal safety because of driving during strike; Ee was refusing to drive as part of concerted attempt, on behalf of both himself and other drivers, to have safer working conditions and Ee's discharge was to discourage Ee and other Ees from engaging in these activities)

General Thermo, Inc. **250 NLRB No. 15**
(threat that organizers of U could be fired, unlawful)

5036-6725 Downgrading or demotion

Tribal American Consulting Corporation **JD-(SF)-314-80**
(demoting 2 employees for holding meetingswith other staff members and contacting U.S. funding agencies,violative)

Werth Engineering, Inc. **JD-295-80**

5036-6726 Evaluation of work

Joshua's, Inc. d/b/a Fitzwilly's **253 NLRB No. 082**
(implementation of Ee evaluation system to be used in granting raises not violative despite E's other anti-U activities where, though plan did not cover entire work force, no evidence application based on illegal motive)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(threatening to give Ee *deficiency evaluation* unlawful where for exercising her protected right of refraining from attending meeting with management on her own time to discuss working conditions)

5036-6728 Denial of sick pay or change in sick leave policy

Maywood, Inc. **251 NLRB No. 139**
(supervisor's requesting Ee who had signed U card to furnish doctor's release in order to receive sick leave pay, not violative, notwithstanding that prior to signing U card, Ee was given sick leave by supervisor w/o being asked for doctor's excuse; Ee handbook states that *sick leave must be supported by a doctor's statement*)

5036-6731 Handling of grievances

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(E informing Ee that due to her filing charges with Bd it would not continue to process her grievances under its internal procedures, violative, notwithstanding its subsequent good faith effort to process grievances)

5036-6733 Illegal conditions on reinstatement

5036-6733-3300 Of strikers

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(requiring discriminatees entitled to reinstatement to be interviewed before they were allowed to return to work held violative where such requirement had no legitimate business justification)

Huron Dressed Beef, Inc. **252 NLRB No. 031**
(refusal to reinstate economic strikers except as new hires with starting wages and w/o seniority and accured vacation, medical and other benefits, and hiring *permanent replacements* in place of those strikers who did not accept offer to return to work as new hires, violative)

Pease Company **251 NLRB No. 080**
(reinstatement of strikers to non-U plant under less favorable conditions than formerly, unlawful, where E considered that it was recalling them to non-unit jobs and failed to shown that changed circumstances prevented it from recalling them to their former jobs; fact that RD's intervening decision accreted them into existing unit did not change situation as it existed at time of their recall; moreover, by requiring them to accept employment at non-U plant, E gave them choice of abandoning U representation or refusing employment, thereby restraining and coercing them)

Harding Glass Industries **248 NLRB No. 091**
(offer of reinstatement to strikers by E who had unlawfully withdrawn from multiE bargaining, on terms inferior to those contained in newly negotiated contract with multiE Association that E bound to honor violative)

5036-6733-6700 Of other employees

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

5036-6735 Prohibiting solicitation and/or distribution of literature during employees own time on employer's premises

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(warning Ee for failure to comply with unlawful overly broad no-solicitation rule which was not clarified to permit solicitation during break times and Ee had been soliciting only on his own time, violative)

General Thermodynamics, Inc. **253 NLRB No. 021**
(posting of facially overly broad no solicitation-no distribution rules prehibiting solicitation on *company time* and distribution on company premises w/o permission of management, unlawful, notwithstanding rule never implement-

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ed and was removed prior to its effective date where Ees never informed of E's decision not to implement rules)

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(rule on solicitation and distribution lawful since it was applied in such manner as to convey clear intent to permit solicitation or distribution during breaks and other periods when Ees were not at work)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

Conagra, Inc. **248 NLRB No. 085**
(informing Ee who had had argument with Ee who was wearing *Vote No* hat that she was not to talk U on company time and U literature was not to be passed out in plant, unlawful, since statement not limited to prohibition during work))

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Leeson Electric Corporation **247 NLRB No. 203**
(maintaining rule which prohibited solicitation at any time in work areas, unlawful)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstance of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

5036-6737 Layoff

B. E. & K., Inc. **252 NLRB No. 036**
(preelection layoff of foreman who was leader of new crew created by E so as to be able to transfer Ees to and from such crew and thereby enable E to rid itself of some known U adherents by eliminating entire crew, unlawful; E's defense on ground layoff was necessary because of *unexpected* need to curtail work because of delay in installing new equipment, rejected, in view of E's awareness of potential delay for sometime prior to layoffs)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(not unlawful where necessitated by economic conditions)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(selection of U adherent for economic layoff, unlawful, since motivated by adherent's U activities where previous unlawful warning letters were factor, E's owner had suggested to adherent she might be happier working elsewhere and offered her severance pay to seek other employment)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(E's laying off pro-U Ees and shortly thereafter adopting policy of sending Ees home early when assigned production tasks were completed, rather than following pre-election traditional policy of *assuring* Ees *continuous full pay check*, violative)

5036-6741 Less favorable treatment

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge violative where another Ee was disciplined with only 1-day suspension for concerted activity similar to that of discharged Ee)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

5036-6743 Harsher working conditions or rules

Hotel & Restaurant Employees, Local 28 **252 NLRB No. 158**
(changing reporting requirements of female Ee who filed sex discrimination complaint with California FEPC so she had to report to E's office three times every workday as opposed to reporting three times a week prior to filing her complaint, violative)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(after her reinstatement, Ee's being assigned full time to arduous machine work when she had shared time on machine with other Ees and being denied same lunch break given other Ees in department held violative, since inference was warranted that Ee was being made to suffer for her concerted action and U activities)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(violation where E enforced work rules more stringently to discourage U support)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(restriction of U activists to assigned areas, violative)

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**
(economically motivated rule changes not violative notwithstanding instituted day after election which E contested)

Weyerhaeuser Company **251 NLRB No. 097**
(more stringent enforcement of rules against Ees for leaving work areas w/o permission as result of U campaign, violative)

Weyerhaeuser Company **251 NLRB No. 097**
(imposing new restriction on Ee smoking when work was caught up or when machines were down, violative)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(assignment of more arduous tasks to Ee, unlawful, where for leadership in lodging Cs regarding supervision)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

Leyendecker Paving, Inc. **247 NLRB No. 010**
(truckdriver's assignment to *different* job was not assignment of more onerous work where it was result of traffic accident and not U activities)

Chipmore Manufacturing Co., Inc. **JD-432-80**
(imposing new and onerous work rules and enforcing shop rules previously enforced sporadically, if at all, held in reprisal for U activities of Ees)

5036-6744 Closer supervision

Russ Togs, Inc. **253 NLRB No. 099**

Peavey Company **249 NLRB No. 110**
(supervisor harassing Ees by following them around, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(where entire work force visible to supervisors, no unlawful surveillance, absent evidence E watching Ees more closely during U campaign)

5036-6745 Lockouts

Century Moving & Storage, Inc. **251 NLRB No. 083**
(no *lock-out* where E, knowing that Ees would be attending U meeting before work usually started, moved up starting time of workday for that date, since E had valid business reason for doing so, had no knowledge when U meeting would end, and warehouse was locked because everyone was out on trucks working)

Harding Glass Industries **248 NLRB No. 091**
(refusal to reinstate ULP strikers after they requested reinstatement constitutes lockout)

5036-6746 Expulsion from plant

Lika Corporation **JD-(SF)-69-80**
(denying Ee, suspected of starting 2 fires in E's plant; access to E's parking lot when he was not working not violative)

5036-6750 Withdraw, deny or delay privileges

Allen-Stone Boxes, Inc. **252 NLRB No. 171**
(change in smoking rule violative, where purpose was to induce Ees not to support U)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(telling Ee, during U campaign, that if U came in she would not be able to come in and talk (to her supervisor), violative as threat of loss of benefits)

G. F. Business Equipment, Inc. **252 NLRB No. 123**
(enforcement of previously promulgated strict telephone call policy after beginning of U activity violative)

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Elizabeth Motors, Inc. **252 NLRB No. 161**
(revoking Ees privilege of working on their own cars in E's shop and using telephone for personal calls)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**
(E's withdrawal of privileges, such as allowing Ees to remain on premises longer than 15 minutes after completion of their shifts and allowing Ees to take food home for consumption by others, from Ees who worked at reataurant unlawful where such actions taken by E were in reprisal against Ees for seeking U representation)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(health care institution's delay in granting permanent privileges to admit their patients to its clinic to doctors who had struck w/o notice in sympathy with institution's Ees, not unlawful in view of doctors' improper and unprotected picket-line conduct while on strike)

5036-6752 Relocating duty station

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(rearrangement of work location in order to restrain Ees' discussion of U, violative where idle talk (between Ees in various departments) had been tolerated by E prior to U campaign)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's attempt to isolate U supporters by restricting movements of some Ees and relocating work station of another Ee, unlawful)

5036-6754 Refusal to employ or reemploy

G and M Lath and Plaster Co., Inc. and Its Aler Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(corporation and its alter ego's refusal to retain Ees on project doing plaster work, violative where president of corporation decided to make project non-U after corporation left completion of project, because of financial problems, to alter ego under supervision of corporate president)

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 150**
(refusal to rehire Ee upon his request because he filed claim for back overtime wages with state agency, unlawful; Ee's action was concerted as well as protected, and E knew it was concerted)

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**
(refusing to consider E for full time position of senior bus driver and failure to appoint him to such position, violative where Ee was qualified for such position because he had been filling in as permanent substitute, and such discriminatory treatment was motivated by E's participation in protected concerted activity for mutual aid of all Ees which entailed sending letter critical of E's operations to federal agency which provided substantial part of E's funding)

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**
(E's action of disqualifying Ee as substitute driver, violative where E was motivated by Ee's participation in protected concerted activity for mutual aid of all Ees which entailed sending letter critical of E's operations to federal agency which provided substantial part of E's funding)

Ontario Knife Company **247 NLRB No. 168**
(discharge and refusal to reinstate Ee assertedly for leaving plant w/o permission, unlawful, where walkout was preceded by grievance discussion and was result of protected activity; even if offensive and *off color* remarks by supervisor were proximate cause of Ee's walkout, supervisor's statements must be considered in context of entire conversation, which was clearly protected concerted activity)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**
(E's refusal to hire Ees of predecessor E because they had engaged in strike against predecessor to protest wages violative)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**
(E's refusal to hire Ees of E's predecessor because they sympathized with predecessor E's Ees who were engaging in strike to protest wages paid by predecessor E, violative)

Frank Briscoe Incorporated **247 NLRB No. 006**
(refusal to reemploy certain Ees laid off as a group because, after their lawful layoff, some of the Ees filed discrimination charges with EEOC, unlawful, since filing of such charges constituted protected concerted activity under Act, regardless of the merit of such charges)

Maryland Cup Corporation **JD-618-80**
(refusal to provide applicant for employment with application form because of U activities of applicant's relatives, unlawful)

B & F Turgeon, Inc. **JD-274-80**
(violatively discharged economic strikers who had made unconditional requests for reinstatement)

The Royal General Company **JD-17-80**
(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**
(mtn for summary judgment against E dismissed where it was clear from record that no genuine issues as to facts material to resolution of instant action existed; ct not pursuaded that plaintiff made *prima facie* case regarding E's discrimination against her for U activities by firing her and not granting her maternity leave)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(health care institution's denial of full-time positions to doctors because of their filing charges with Bd, unlawful)

5036-6762 Refusal to reinstate strikers

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(denial of reinstatement to discriminatees whom E thought would most likely cause continued labor disturbances if reinstated, violative, since Ees' walkout was protected activity and E had no business justification to deny their reinstatement)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(forewoman's statement to Ee (striker) seeking reinstatement that Ee would have to wait until Bd ruled on charges Ees filed before she could give answer, violative, since statement conveyed that filing of charge had cut off further consideration of possibility of reinstatement)

Huron Dressed Beef, Inc. **252 NLRB No. 031**
(refusal to reinstate economic strikers except as new hires with starting wages and w/o seniority and accured vacation, medical and other benefits, and hiring *permanent replacements* in place of those strikers who did not accept offer to return to work as new hires, violative)

Fun Striders, Inc. **250 NLRB No. 087**
(refusal to reinstate strikers who had distributed protected, but nontheless, politically inflamatory materials, violative)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(discharge and refusal to reinstate Ees unlawful, since Ees were economic strikers who were subject to permanent replacement but not to discharge)

Central Cadillac Company **JD-243-80**
(E's refusal to allow striking Ees to return to work w/o doctor's certificate, unlawful, notwithstanding E's contention that Ees made no valid unconditional offer to return to work, where strikers reported in body to E's premises at regular reporting time, most in work clothes; furthermore, medical certificate requirement instituted night before return and, subsequently, never enforced)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(refusal to reinstate economic strikers upon their request to return to work assertedly because *they had been replaced and did not have a job*, violative, where there was scant evidence proffered by E to show that it had promptly and validly employed new permanent Ees to replace strikers prior to the latters' request to return to work)

5036-6770 Partial or complete termination or liquidation of business

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(E's sale of 2 of its 30 trucks 3 months after strike which had no effect on Ee's job did not violate Act)

Aztec Manufacturing Company **JD-(SF)-92-80**
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**

5036-6770—Cont.

(E may shutdown entire business even if motivated by anti-U conduct but cannot close it temporarily and reopen in order to oust U)

5036-6774 Change in method of compensation

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(revising incentive system by eliminating minor bonus hours so that favorable impact of decision was realized 4 days before election, violative as plan to change incentive program was in germinal form only prior to advent of U)

5036-6777 Suspension

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge into suspension and written warning because he refused to drive tractor-trailer which he honestly and reasonably believed to be unsafe held unlawful, since refusal was right Ee was at liberty to exercise under contract even though at time of refusal he had not made any specific reference to contract)

Greyhound Lines, Inc. **251 NLRB No. 167**
(suspension of drivers who prepared and issued press release announcing Ees' concerted adherence to speed limit resulting in slowdown in protest of E's conduct of labor relations, violative; contrary to contentions press release contained neither malicious falsehoods nor disparagement of quality of E's products or services)

F. W. Woolworth Co. **251 NLRB No. 152**
(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Allied Aviation Service Company of New Jersey, Inc. **248 NLRB No. 026**
(suspension and subsequent discharge of Ee, unlawful where E's actions were caused by Ee's protected activity of sending letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft)

The Gilbert and Bennett Mfg. Co. **JD-578-80**
(threatening to discharge Ee if he made any more fuss to U about his overtime backpay under arbitrator's award, violative)

Peschke Packing Company **JD-(NY)-33-80**
(no violation where suspension was found to be for Ee's disregard of company policy by taking excessive time for relief breaks rather than for his complaint about supervisor's breach of contract by doing unit work)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(contention that Ees were properly suspended for refusing for safety reasons to perform job assignment, purportedly because their action was unprotected because it violated contract, rejected, since Ees had sincere belief that abnormally dangerous condition existed and their actions were both sincere and reasonable)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(suspension of Ees for refusing to perform job assignment for safety reasons, unlawful, since Ees' conduct was concerted, and not individual, action, it constituted protected activity, and E failed to present alleged violation of contract as affirmative defense)

5036-6779 Transfer of work elsewhere

Hall of Mississippi, Inc. **249 NLRB No. 119**
(telling Ees that they were being laid off because of their U activities and implying that E would transfer work from local plant to another plant, violative)

5036-6781 Loss of overtime work

Werth Engineering, Inc. **JD-295-80**

5036-6782 Rescheduling of hours

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**
(knowingly creating situation where E had Ees with idle time, and subsequently reducing work hours, unlawful where done out of antipathy toward U supporters)

5036-6783 Workload increased

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(increasing Ee production rates in reprisal for Ees' support and activities on behalf of U, unlawful)

5036-6784 Change in vacation policy

Larsen Supply Co., Inc. **251 NLRB No. 175**
(withdrawing advance vacation privileges)

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(E's change in vacation policy advantageous to Ees, not unlawful, where GC's claimed *immediately favorable* nature of change was speculative, there was no evidence of E's knowledge of organizational attempt, change was not made with any purpose other than to remedy grievance, and there was no reason for concluding that change would interfere with unionization of E by Ees)

5036-6785 Transfer to another job

John Wyke, Inc.; Comanco, Inc.; and Joba Construction, Inc. **253 NLRB No. 118**
(transfer and subsequent permanent layoff of Ee because of efforts on his behalf to obtain rate of pay specified in bargaining contract, violative)

Russ Togs, Inc. **253 NLRB No. 099**
(transfer of grievants to other jobs with more arduous duties and closer supervision, unlawful)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E's implementation of job rotation plan that was designed by E to transfer leading U adherent to another job that was less of his liking, unlawful)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(U council's threat to transfer Ee-staff member to different location in his assignment of servicing U locals, unlawful, where action was in retaliation for his protected U and concerted activities; action came on heels of unlawful suspension of Ees for attending U meeting and for soliciting aid outside of labor organization, and closely followed council's attempt to prevent second U meeting involving U's attorney called to address, amont other things, Ees' suspensions)

Suburban Ford, Inc. **248 NLRB No. 051**
(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

National Southwire Aluminum **247 NLRB No. 175**
(E who transferred Ees to different jobs in retaliation for Ees' U activities violated Act notwithstanding job assignments were less physically demanding and paid same salary)

Tribal American Consulting Corporation **JD-(SF)-314-80**
(transferring school bus driver in retaliation for his strike and other U activities, violative)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(transfer of Ee to more physically demanding job and one which was painful for her, because she would not submit to supervisor's interrogation about U, unlawful)

5036-6786 Withholding vacation pay

C. F. Martin & Co., Inc. **252 NLRB No. 167**
(withholding accrued vacation benefits from striking Ees, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(not granting vacation pay to ULP strikers who were unlawfully not recalled by eligibility date, though strike over, violative, as benefits vested on that date notwithstanding they had not been recalled)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(denying accrued vacation pay to striking Ees, unlawful)

5036-6788 Denial of paid vacation

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

5036-6789 Reduction in work of hours

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(E violated Act where rehired striker changed from guaranteed 40 hours week and placed on seniority list which caused him to work less than 40 hours)

Behring International, Inc. **252 NLRB No. 055**
(E unlawfully deliberately reduced work available to its warehouse Ees in preelection period by diverting freight and using contract labor in order to discourage Ees from supporting U)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**
(knowingly creating situation where E had Ees with idle time, and subsequently reducing work hours, unlawful where done out of antipathy toward U supporters)

5036-6790 Denial of or change in insurance coverage

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

5036-6791 Discrimination against supervisors

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(*discharge of supervisor solely for that supervisor's own U activities does not contravene...Act*)

5036-6793 Change in work rules

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's attempt to isolate U supporters by restricting movements of some Ees and relocating work station of another Ee, unlawful)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation, where E changed its lenient work rules to forbid Ees who were demanding improved terms of employment to talk to customers or other Ees)

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

Mather Federal Credit Union **JD-(SF)-8-80**
(disparately enforcing work rule only against Ees engaged in U activity)

5036-6796 Change in loan policy

St. Francis Hospital **249 NLRB No. 017**

5036-6798 Change in lunch and/or break period practices

Larsen Supply Co., Inc. **251 NLRB No. 175**
(E violated Act where prior to election which U won, Ees were allowed to take their lunch breaks whenevers it was convienent but afterwards required them to take it at specified time in rataliation for U vote and w/o E bargaining with U)

Battery Bill, Inc. **249 NLRB No. 030**

Conagra, Inc. **248 NLRB No. 085**
(threat to eliminate bathroom breaks in bargaining if U came in, unlawful)

5036-7500 **Affirmative defenses to charges of changes in conditions of employment**

5036-7525 Business management considerations

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(requiring discriminatees entitled to reinstatement to be interviewed before they were allowed to return to work held violative where such requirement had no legitimate business justification)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(E's defense that reason for discharge of Ee truckdriver was Ee's damaging engine rejected, notwithstanding fact that damage gave E cause to discharge Ee, since real reason for discharge was Ee's refusal to assist E in defeating claims made by Wage and Hour Division of U.S. Department of Labor)

Aztec Manufacturing Company **JD-(SF)-92-80**
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

5036-7550 Good-faith belief that employee misconduct justified change

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in numicipal ct)

5036-7550-6700 **No defense if conduct did not in fact occur**

General Telephone Company of Michigan **251 NLRB No. 099**
(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

Roadway Express, Inc. **250 NLRB No. 061**
(where some Ees had engaged in unauthorized work stoppage and U steward returned to E's facility after leaving work at end of his regular work day, E's discharging steward for purportedly participating in unauthorized work stoppage held violative notwithstanding E's assumed good-faith belief that steward had participated in work stoppage upon returning to facility; Ee, in his capacity as U steward,was engaged in efforts to end work stoppage when he was discharged)

Babcock & Wilcox Co. **249 NLRB No. 099**
(discharge of U president because of E's erroneous belief that, while engaged in protected activities associated with his office of U president, he had instigated wildcat strike and promoted it w/i U, unlawful; in view of such finding and since remedy would be same, Bd found it unnecessary to decide whether or not E also violated 8(a)(3))

5036-8300 **Threats of changes in conditions of employment**

5036-8301 Generally

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

5036-8302 Nonspecific threat of reprisal

Piezo Technology, Inc. **253 NLRB No. 122**
(reading prepared speech to Ees that E could find out who signed U cards if U showed E cards as indication of majority status, violative, where such subtle warning had chilling effect on Ee Section 7 rights)

Dillman Foods, Inc. **253 NLRB No. 114**
(violation where E explained to Ees his company policy that *he did not want U* and instructed Ees to report identity of U card solicitors *and he would take care of it accordingly*)

Woonsocket Spinning Company **252 NLRB No. 163**
(threatening Ee members of U negotiating committee who reported E's poor labor relations policies to Ees violative)

United States Postal Service **252 NLRB No. 014**
(physician's remarks about U, made during physical examination of Ee, and his questioning of Ee as to why Ee wanted U representative with him at physical examination, not unlawful where, although physician was supervisor of nurses, he was not acting in supervisory capacity as to Ee being examined, and his question and remarks that Ee deserved discipline, which were due to his personal irritation, could neither be attributed to E nor reasonably be construed as threat of retaliation)

Certain-Teed Insulation Company **251 NLRB No. 208**
(statement made during unlawful interrogation prior to election that if U comes in *there might be a job slowdown, expansion might be slower, advancement might not be as fast, etcetera,* violative, where statement transcends mere opinion to constitute threat of adverse consequences if U selected)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(threatening Ees if they did not sign document which favored E by stating that Ee was satisfied with E's working conditions and did not want U, unlawful)

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(sales manager's questioning of Ee and his admonition to her that her walkout efforts were *not nice thing to do,* unlawful, since they were designed to coerce her to abandon her determination to walk out)

Clark Equipment Company **250 NLRB No. 178**
(telling Ees it would be *hell* to work there if they voted for U, violative)

Clark Equipment Company **250 NLRB No. 178**
(telling Ees that they stick their necks out by wearing U badges, violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(statement informing Ee that E was calling all Ees to warn them that if they attended U meeting *they would be in trouble,* unlawful)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(threat that Ee should look after his job because he had a family, unlawful, in view of E's statement that U should not get in for betterment of Company)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(remarks that Ees were making big mistake in supporting U and were going to learn hard way, violative)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(threatening trouble to Ees who signed U cards, violative)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E unlawfully threatened Ees with reprisals for engaging in U activities by telling them that, after it made telephone call out-of-town, it would make everybody involved with U disappear)

Lyman Steel Company **249 NLRB No. 040**
(pressing Ee to sign statement that he had received U authorization card from U advocate during working hours, violative, since activity, in anti-U context, suggested E planned reprisals for Ees who supported petitioner)

St. Francis Hospital **249 NLRB No. 017**
(statement that Ee would be punished *to the maximum* if she was ever caught with U materials violative)

Permanent Label Corporation **248 NLRB No. 021**
(threats of discipline directed toward 3 most active U supporters during meeting of supervisors violative where E had contrived, flimsy basis for believing Ees to be supervisors)

5036-8302—Cont.

International Medication Systems, Ltd. **247 NLRB No. 190**
(remark *What if you get put in jail?* to Ee who had executed affidavits relating to investigation and trial of Bd proceeding, unlawful, where, in context in which it was said, it may reasonably be construed as threat of reprisal for being involved with U)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(suggestion to Ee that he should try to talk Ees out of supporting U and that *last time this happened about the union, you know, the company wouldn't put up with that* constituted threat that company would retaliate against Ees for their U activities)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(statement to Ee that Ees would have to go on strike to get U in at plant, unlawful as threat of reprisal, since statement was not based on objective fact and was obviously injected to raise fears of reprisal)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(unlawful threat of disparate treatment by statement to U adherent that if he were caught sitting or laughing in back room, *you're dead*)

Thermo King Corporation **247 NLRB No. 048**
(supervisor's statement to Ee that he would be cutting his throat if he voted for U, unlawful, since it constituted threat of economic and other reprisals for voting for U)

U. S. Postal Service **JD-(SF)-242-80**
(supervisor held not to have threatened to retaliate against Ee because of U steward's insistence on investigating incident involving supervisor and Ee, or to have retaliated against attempts of U steward to investigate incident by issuing Ee a letter of warning, where Ee engaged in conduct which E reasonably viewed as insubordinate and supervisor immediately reported incident to his superiors at which time decision was made to discipline Ee, and such decision was reached several hours prior to steward's arrival at the scene)

Peschke Packing Company **JD-(NY)-33-80**
(interrogation of Ee as to why he had filed ULP charges against E and threats to make it rough for him, unlawful)

Giuliem Apparel Corp. **JD-162-80**
(E president's statement to Ee that heads would roll if he found out who was behind U, unlawful)

Garden State Motors Co. **JD-160-80**

Roadway Express, Inc. **JD-868-79**
(no violation by E's statement that disciplinary action would result from senior Ee's refusal to carry out assignment because of availability of junior men when he was told that assignment was according to past practice and that grievance procedures were available for his protests)

E. W. Saybolt & Company, Inc. **JD-06-80**
(E's statement upon being told that Ee had been subpoenaed to testify in this proceeding that he was sure Ee would do the right thing held not to constitute threat of reprisal for testifying in Bd proceeding)

5036-8304 Abolishing striker's jobs

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

Fotomat Corporation **248 NLRB No. 150**

5036-8308 Blacklist

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(supervisor's statement that E was maintaining *a little black book* on Ees which would prevent them from obtaining other jobs, violative)

B. E. & K., Inc. **252 NLRB No. 036**
(injection of idea of blacklist into E's preelection remarks by stating that other Es put Ees' names on it if they were affiliated with or voting for U held threat of loss of job opportunity with E and with other Es and, as such, interference with election; effect of E's disavowal that it would consider it as not intended as a true disavowal)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(E's statement to Ee that discharged Ee was on blacklist and would not be able to find employment in area violative as threat to Ee that similar fate could befall him if he was fired for U activity)

Galax Apparel Corporation **247 NLRB No. 026**

American Navigation Co. **JD-(SF)-296-80**
(threatening to call Es in area to prevent Ee from obtaining future employment because of his U activities, violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(informing Ee that if plant closed when U came in, E would have difficulty in getting another job with non-U E, violative)

5036-8310 Denial of reemployment or reinstatement

Red Food Store **252 NLRB No. 023**
(statement that E would not hire anyone who had worked at unionized store constituted unlawful threat)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

U. S. Oil & Refining Company **JD-(SF)-116-80**
(no violation by informing U president that U's interpretation of seniority provisions of bargaining agreement would have adverse effect on summer employment for sons and daughters of E's Ees)

5036-8311 Suspension

Weyerhaeuser Company **251 NLRB No. 097**
(comment to Ee in reference to his giving advice to fellow Ee concerning U and wage claim which was coupled with reference to suspended Ee, violative, where it could reasonably be construed as threat of suspension)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(violation where supervisor informed Ee that she could either talk to him w/o another Ee being present as witness at Ee interview, or consider herself suspended)

The Gilbert and Bennett Mfg. Co. **JD-578-80**
(suspension and discharge of Ee because of his complaints to E directly and through U about not receiving his overtime backpay under arbitrator's award violative)

5036-8312 Discharge or layoff

Central Transport, Inc. **253 NLRB No. 130**
(statements by E's vice-president to applicant who had been involved in intra-U rivalry that if after applicant was hired local U requested applicant's discharge E's owner would direct vice-president to discharge applicant, not unlawful, since no threat made and statements were in response to applicant's negative attitude; vice-president had earlier suggested applicant commence working while member of another local; further, applicant refused vice-president's offer to be calm and give it a try made after allegedly improper remarks)

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(threatening Ees with discharge if they supported U, unlawful)

Dillman Foods, Inc. **253 NLRB No. 114**
(statement at Ee meeting that U would *ruin* E and would cause him to pay such high pay scale that E would have to lay off Ees, violative)

Service Machine & Shipbuilding Corp. **253 NLRB No. 088**
(threatening welders with discharge for refusing to work in the rain, unlawful; Ees' concern was about safety and health)

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(threat to execute contract with favored U whether or not Ees wanted it to represent them and to discharge Ees who did not join it w/i 30 days, unlawful)

Crown Cork & Seal Company, Inc. **253 NLRB No. 035**
(remark during speech to Ees about U adherent's activities in plant looking like he was running for U president and subsequent statement directly to U adherent that his *time was limited* constituted unlawful threat of discharge)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(telling Ees that U could jeopardize their employment and outcome will affect their future as Ee, violative)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor informing Ee he felt sorry for her and asked what Ee would do if office closed down as result of unionization, unlawful)

Stewart-Warner Corporation **253 NLRB No. 016**
(foreman's threat to discharge Ee because of his participation in U activity violative, not withstanding foreman and Ee were friends as impact of statement is probably greater in view of source)

Pennypower Shopping News, Inc. **253 NLRB No. 011**
(E's causing Ees reasonably to believe that they had been discharged, or that their continued employment status was questionable because of their strike activity, unlawful)

O. B. Williams Company **252 NLRB No. 146**
(soliciting withdrawal of charges filed by Ees with State Human Rights Department and threatening job security of Ee if he didn't withdraw charge, unlawful)

Smith Auto Service, Inc. **252 NLRB No. 068**
(violation where E president told prospective Ee that E president would *clean house* at shop)

GE's Trucking, Inc. **252 NLRB No. 131**

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(E's reply to leading U advocate, who had stated that if there were no wage raise Ees would have to start U, that if they did so they would all be fired, unlawful, as clear threat of repirsal)

GE's Trucking, Inc. **252 NLRB No. 131**
(E, operating trucking company engaged solely in distributing another E's product, who stated to his own Ee that distributor would fire them all if they started U, unlawful either as threat of discharge or as statement that selection of U would be futile; distributor was in position to affect E's business for better or for worse, and Ee might reasonably assume that E would know, better than Ee, what action their mutual livelihood would take in event of unionization)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(telling Ees that it they didn't like E's keeping U out of plant, they could leave, violative)

Huron Dressed Beef, Inc. **252 NLRB No. 031**
(E's threat to fire economic strikers for striking , unlawful)

Dooley Equipment Corporation **252 NLRB No. 020**
(threatening Ee with discharge if he continued to support U or vote in upcoming election, violative)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(supervisor's warning Ee in reference to another Ee's discharge that it could have been her and that she should not display her U support to management, violative)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(supervisor's telling two Ees he had warning for them, adding that he had just come from supervisor's meeting in which names were mentioned, and that if *they* could get rid of certain people they would counteract U, violative, notwithstanding supervisor may have considered one of Ees as a friend)

Maywood, Inc. **251 NLRB No. 139**
(E president's stating in presence and to hearing of Ees that he would terminate U supporters one at a time, violative)

Maywood, Inc. **251 NLRB No. 139**
(threatening to find excuse to terminate Ee for engaging in U activity, violative)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(supervisor telling Ee if he *wanted to keep working to stick with* E, unlawful since it amounted to both threat of discharge for supporting U and promise of benefit for opposing U)

Ben Franklin Division of City Products Corporation **251 NLRB No. 200**
(where E coupled threat to discharge Ee for absenteeism with his U activity, violative, notwithstanding Ee's later discharge for absenteeism found lawful)

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(threatening to select rehired strikers for layoff first in event of future layoff because Ees participated in ULP strike, violative)

Blue Bird Body Company **251 NLRB No. 196**
(audio slide presentation to all eligible voters, violative where remarks of Ee participants in presentation impliedly threatened that U adherents would eventually be discharged for pretextual reasons)

Chester Valley, Inc. **251 NLRB No. 190**
(telling Ees that, if U came in, E would not keep part-time Ees around and that E might be unable to *afford* part-timers as steady Ees because most Us have set hours, unlawful)

Chester Valley, Inc. **251 NLRB No. 190**
(contention that E's oral comments as to eliminating part-time Ees or their flexible work hours were not unlawful because Ees who heard remarks were not themselves part-time Ees, rejected, since it is reasonable to infer that E's remarks were passed along to part-time Ees, as they actually were; assuming that E did not thereby intend to threaten Ees and that Ees were not in fact coerced, such assumptions would not render threats herein lawful)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(violation where E threatened Ees that their support of Us would be futile since E would never sign contract and would terminate or permanently replace any Ees who went on strike for contract)

Weyerhaeuser Company **251 NLRB No. 097**
(invitation to U adherents to quit or find employment elsewhere constituted implied threat of discharge)

Weyerhaeuser Company **251 NLRB No. 097**
(expressing belief that Ee would not *endure* U campaign constituted implied threat of discharge)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Ford Motor Company **251 NLRB No. 066**
(supervisor's warning that Ees could end up getting fired for pressing their complaint against E's promotional policies, unlawful)

Stafford Construction Co. **250 NLRB No. 128**
(E's statement that if Ees joined or wanted to organize U they would be replaced violative)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(threat to rearrange Ee's work schedule so as to conflict with her personal responsibilities and thus force her to quit her job made in context of conversation about recent discharges and U activities held unlawful threat of discharge if Ee engaged in U activities)

Clark Equipment Company **250 NLRB No. 178**
(telling Ees company was going to get rid of U *pushers*, violative)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(foreman's threatening Ees that E would discharge Ees who voted for U held violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's threat to Ee that if U came in Ee would be first U would let go because she would be absent a lot and U was very strict, unlawful, since E thereby coerced Ee in her U adherence by unsubstantiated charge that U would cause loss of her job if it represented Ees)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(remark that one way to get rid of U or take care of big U vote was to layoff night shift because it was 100 percent behind U, violative)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(E's statement, in context of conversation in which Ee complained about unfairness of his discharge, that company would rather pay few thousand dollars than see U get in, violative)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Sentry Investigation Corp. **249 NLRB No. 130**
(violation of Section 8(a)(1) where E failed to disavow threats of shop steward that if Ees changed bargaining representative they would lose their jobs to members of new representative with more seniority)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(threat of layoff absent objective facts that such adverse consequence of unionization was inevitable violative)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(telling Ees that replacements for their positions had been hired and that E would not sign U contract constitutes threat of discharge)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(threatening economic strikers with job loss for not abandoning strike, unlawful)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(violation, where Ees who were reluntant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew*, held violative)

Lyman Steel Company **249 NLRB No. 040**
(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off*, held violative)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(E's statement to Ee, who was demanding minimum pay for Ees and other improvements in terms and conditions of employment, that she should get another job if she did not like the way E was running its business, violative)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation, where E stated during meeting with Ees that certain Ees who were demanding improvement in terms of employment were troublemakers and thereby threatened their job security as undesirable Ees)

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Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(supervisor's statement that *he could hire twenty men to come in there and knock the work out that was in the yard and lay everybody off,* violative, where statement followed unlawful interrogation of Ees as to how they were going to vote in election)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where supervisor informed Ees that E's president had said that if Ees voted in U, he would close down and all would be out of job)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(supervisor's telling Ee that he would *personally* fire her if she had signed certain complaint letter, violative)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(where Ees and supervisors were discharged for participating in writing and distribution of Ees' letter which complained about general manager's operation of E's hotel and suggested manager's discharge, manager's memorandum *to all employees* warning that fate of supervisors would befall Ees if they engaged in similar complaint in future, violative)

Baine Service Systems, Inc. **248 NLRB No. 087**
(Ee's would be discharged if they refused to sign checkoff authorization cards in favor of illegally recognized U)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E's statement that Ees must become members of illegally recognized U to keep their jobs violated Act)

Vogt-Conant Co. **248 NLRB No. 027**
(supervisor's telling Ee that E would get rid of Ee if he did not *shut his mouth* about E's elimination of certain contractual overtime payments, violative)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(forbidding Ee, under threat of termination, from discussing with his fellow Ees contents of meeting with management in which Ee had spoken about or questioned matters of health benefits, pension rights, and wage increases for himself and other Ees, violative)

B. N. Beard Company **248 NLRB No. 016**
(interrogating Ees as to whether they intended to strike, closely followed by threat to discharge them if they did so, unlawful)

Servomation Corporation **248 NLRB No. 014**
(telling Ee not to file a grievance with U over alleged safety matter because it could possibly result in Ee's discharge, unlawful)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(supervisor's telling U supporter in gathering after election, *you're on your way out,* violative, since statement constituted implied threat of discharge)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(prohibiting Ees from talking about the U on production line and threatening them with discharge if they do so, unlawful where talk of U was only restriction on conversation)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(E's statement that he wished to hire new Ees made w/o explanation during period of U activity is veiled threat of discharge as it indicates that E intends to replace some or all existing Ees because of their U activity)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(threat to hire new Ees violative because threat construed to discharge strikers)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(threat to lay off Ees if E did not get open shop proviso in contract or if U representative filed grievance)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(statement to proU Ee that if he wanted to come back, he could but that the future of the plant was coming to an end, that since he had good job, E recommended that he not leave it to return to E, held merely realistic warning rather than statement that Ee had no future with E)

The Saloon, Inc. **247 NLRB No. 156**
(comment to Ee that she could be replaced, made in context of her reluctance to disavow U and to embrace E's new health care program, unlawful, even though E may have been joking when remark was made)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(threat to discharge part-time Ees under 18, Ees who had signed U cards, and Ees who were just a little late if they supported U or U won, unlawful)

Universal Service Contractors **247 NLRB No. 097**
(threatening striking Ees with discharge if they did not return to work violative)

Tartan Marine Company **247 NLRB No. 073**
(supervisor showing Ee clipping about discharge of individual for not attending U meetings on Sundays, and informing Ee that Ee and other Ees could be laid off before less capable Ees if U came in, unlawful, absent evidence U advocated seniority over capability)

Anco Insulations, Inc. **247 NLRB No. 081**
(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(E's statement to Ee that *if the drivers mess around with a union, we'll all be out of a job,* violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(stating to Ee, in response to her statement of U support, that E's warehouse was full of E's finished product, unlawful, notwithstanding E's attempt to repudiate initial statement, where E's statement was well understood code for economic troubles meaning layoff of Ees and implied that U activity could result in plant closure or layoff)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(supervisor's remark that U supporter would be first to go if anything happened, unlawful, in view of supervisor's attempt to get Ee to renounce U)

Keister Coal Company, Inc. **247 NLRB No. 049**

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(telling job applicant that a few Ees would be leaving implying post-election discharge of U adherents, unlawful)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(soliciting Ee to quit job because of U activity, unlawful)

Thermo King Corporation **247 NLRB No. 048**
(baseball poster, displayed by E during election campaign, bearing slogan *You only get one strike and you are out. And that's the way it is with the Union* held not to constitute threat of discharge, since factual representations that when Ees engage in strike they are not receiving pay, and they are walking or out on picket line, are permitted as expressions of free speech)

Galax Apparel Corporation **247 NLRB No. 026**

The Pacific Telephone and Telegraph Company **JD-(SF)-322-80**
(supervisor's response to U steward presenting grievances that he was a troublemaker and troublemakers would not get far in the company held unlawful threat to job tenure or chances for advancement)

Maryland Cup Corporation **JD-618-80**
(advising U adherent that it would not be unwise for him to resign from his employment if the U lost a scheduled election, unlawful as E acquiescence in pressure by some Ees to penalize another Ee for his U or concerted activities)

Hughes-Bechtol, Inc. **JD-556-80**
(foreman's warning to Ee who complained about plumbers doing laborers' work that he should watch his step, violative, where such comment was clear threat that Ee's job was in jeopardy if he persisted with his protected concerted activities)

Chipmore Manufacturing Co., Inc. **JD-432-80**
(violation by threat that U activitist would be fired if he continued to hang around with other company Ees or if he got caught in the tool room--in violation of a rule that was enforced sporadically until U campaign)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(E's statement that he was dissatisfied with condition of warehouse and that if Ees did not work together, he would find people who would, not unlawful threat of discharge, as contended, where there was no reference to U and U supporters were not singled out)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services **JD-(SF)-225-80**
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

Consumer Enterprises, Inc. **JD-342-80**
(supervisor's statement to Ee that he knew Ee was pushing for U and to be careful because *they could kick you out* held violative)

Magic Mountain Corporation **JD-337-80**
(supervisor's statement that Ee should drop his U activity or else lose his job, unlawful)

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Coastal Volkswagen, Audi **JD-(SF)-144-80**

U. S. Oil & Refining Company **JD-(SF)-116-80**
(informing Ee that another Ee might have to be laid off if U pressed claim for revision of his seniority status, unlawful)

Standard Bridge Corporation **JD-174-80**
(threatening Ees with discharge if they did not refrain from seeking membership in U, unlawful)

Lika Corporation **JD-(SF)-69-80**
(warning that Mexican nationals would be sent back to Mexico if U came in is implied threat of discharge)

T.V. Dispatch, Inc. **JD-143-80**
(requiring Ees to apologize for having participated in grievance meeting in order to retain their jobs)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(telling Ees that leader of Ee organizational activities would be terminated *when the time was right,* or w/i 90 days waiting period following U election)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(threats to hire new Ees immediately after U representative requested recognition held violative where evidence on record supported conclusion that Ees could reasonably infer from timing that such threats were directed towards Ees' decision to join U)

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**
(enforcement denied where ct found that record of proceedings lacked substantial evidence to support conclusions contrary to ALJ; ct rejected argument that E's statements had *tendency in the totality of circumstances to intimidate* Ees or Ees feared that they would lose two hours *show up* pay or be laid off)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(threat of loss of jobs if U came in, violative)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**

N.L.R.B. v. Midland National Life Insurance Company **621 F.2d 901 (C.A. 8, 1980)**
(restriction of Ee to her desk, after being reprimanded for engaging in U activities, until after election, and threat to discharge her if she left that immediate area, unlawful)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(ct upheld violation where E threatened Ees with discharge if they followed fellow Ee's example of passing out authorization cards)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(threat to discharge Ees who associated with a U adherent, unlawful)

5036-8312-5000 Directed at supervisors

B. E. & K., Inc. **252 NLRB No. 036**
(allegation that supervisors were discharged because of their U activity or beliefs, dismissed; although finding of unlawful discharge would be warranted were they not supervisors, they do not come w/i protection of 8(a)(3), and facts concerning their discharge do not show restraint and coercion of Ees w/i meaning of 8(a)(1))

5036-8318 Handling of grievances

G. F. Business Equipment, Inc. **252 NLRB No. 123**
(loss of access to management to present grievances)

5036-8322 Less favorable treatment

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(violation where supervisor told Ees that if things didn't go the way Ees hoped with regard to U campaign, he was going to cut out extended breaks and talking, and Ees were in effect going to work harder)

Chester Valley, Inc. **251 NLRB No. 190**
(E's statement that if U came in he might change part-time Ees' hours which had been accomodated to their school sports activities, unlawful)

Chester Valley, Inc. **251 NLRB No. 190**
(E's letter to all Ees stating that U might bargain away flexibility in work hours for *something more favorable to them,* and that E's existing practice was much easier than trying to find flexibility provision in U contract, unlawful)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(general foreman threatening Ees that if they chose U as their representative, E would do away with procedural safeguards in Ee handbook)

The Gilbert and Bennett Mfg. Co. **JD-578-80**
(statement to coworker of Ee who was entitled to backpay pursuant to arbitration award that if Ee did not stop asking about overtime backpay E would punish Ee more severely for safety violations than previously, violative)

5036-8327 Loss of opportunities for advancement

Montgomery Ward & Co., Inc. **253 NLRB No. 02**
(supervisor's statement that he could no longer support Ee's application for management position because of Ee's U activities unlawful, notwithstanding supervisor's later repudiation of remarks)

Montgomery Ward & Co., Inc. **253 NLRB No. 02**
(supervisor expressing desire to see Ee in management position, but at same time informing Ee that if Ee aspired to management position Ee had better change her ways, unlawful)

Ford Motor Company **251 NLRB No. 06**
(supervisor's statement to Ees who filed grievances, contemplated civil suit and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

National Southwire Aluminum **247 NLRB No. 17**
(E's statements to Ee wearing U button that his U activities would have negative effect on his chances for job reassignment constitute threat but not interrogation as to his U sympathies)

5036-8328 Oppose employee's unemployment compensation claim

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E's president informing U officer that had been filing grievances that *if she didn't give him a hassle* he would let her sign up for unemployment insurance compensation unlawful threat to oppose her receipt of unemployment compensation if she invoked contractual grievance procedure)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that U campaign leader would lose his profit sharing benefit on account of unionization of plant, violative)

5036-8329 Loss of benefits

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(telling Ee, during U campaign, that if U came in she would not be able to come in and talk (to her supervisor), violative as threat of loss of benefits)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(supervisor's remarks during break, in response to Ee's question, that when a U comes in you bargain from minimum wage up and there are no benefits until contract signed, violative as remarks were threat of loss of existing benefits)

Behring International, Inc. **252 NLRB No. 055**
(plant manager's statement to Ee that, if Ees voted for U, he would probably handle negotiations and that there was a good chance that Ees would then lose their stock option plan, profit-sharing and pension benefits, unlawful, notwithstanding that E's comment was recognized as insubstantial by Ee whose response was in nature of protest which did not reduce significance of E's threat)

Maywood, Inc. **251 NLRB No. 139**
(supervisor's statement that if Ees got U in *all benefits including profit sharring and incentive would be dropped* and Ees would be *dropped back to the minimum wage,* violative)

Climate Control Corporation **251 NLRB No. 102**
(posting notice threatening Ees with loss of existing benefits if U were voted in, violative)

Chester Valley, Inc. **251 NLRB No. 190**
(statement that U might *force* E to discontinue existing benefits of discount on gasoline and auto repair work, uniforms, and liberal breaktimes, unlawful)

Chester Valley, Inc. **251 NLRB No. 190**
(contention that E's oral comments as to eliminating part-time Ees or their flexible work hours were not unlawful because Ees who heard remarks were not themselves part-time Ees, rejected, since it is reasonable to infer that E's remarks were passed along to part-time Ees, as they actually were; assuming that E did not thereby intend to threaten Ees and that Ees were not in fact coerced, such assumptions would not render threats herein lawful)

Chester Valley, Inc. **251 NLRB No. 190**
(telling Ee that benefits which Ee wanted U to obtain for Ees were too expensive for E's gasoline station and E would turn it into self-service station if he had to, not unlawful, since remarks dealt with an economical means of accomodating two objectively demonstrable circumstances, namely, specific proposed U demands and gasoline station's financial condition)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(telling Ees that they could lose both their profit-sharing and pension benefits if U came in, violative)

Weyerhaeuser Company **251 NLRB No. 097**
(comment that Ees might lose benefits in response to Ee's statement that U Ees would get *so much an hour,* not unlawful, where conversation was related to E's letter to Ees outlining *give-and-take* of bargaining process)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

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American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**

(statement that Ees at plant which had voted for U were being denied benefits that non-unionized Ees were granted violative as threat of reprisals)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(statement implying that Ees would lose insurance coverage paid for by E if U were certified, unlawful and interference)

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Fotomat Corporation **248 NLRB No. 150**

American Sunroof Corporation; et al. **248 NLRB No. 038**

(threat that Ees would not be eligible for new pension plan if U prevailed, unlawful)

American Sunroof Corporation; et al. **248 NLRB No. 038**

(informing Ees that eligibility in pension plan was limited to nonbargaining unit Ees, unlawful)

Conagra, Inc. **248 NLRB No. 085**

(threatening to eliminate pension plan if U came in, unlawful)

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(statement to waitress performing nonwaitress tasks that if she were represented by U she could not do this type of work constituted unlawful threat of loss of existing benefit)

J. H. Block & Co., Inc. **247 NLRB No. 041**

(loss of vacation pay and Christmas bonus if U was selected)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**

(violation where E announced to Ees intention to repudiate provisions of contract which relate to hospitalization insurance premium)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**

(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**

(E president stating to Ees during pre-election E's *captive-audience meeting* that there would be no Christmas bonus that year, that the funds that would otherwise be used to pay Christmas bonuses would be used to pay his attorney's expenses in opposing U, and that other benefits were to be terminated, violative)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(statements by supervisors that if U came in Ees could lose benefits violative, notwithstanding qualifying words such as *possibility, might or probably* were used as benefits referred to were controlled by E)

5036-8333 Loss of overtime work

Fluid Packaging Company, Inc. **247 NLRB No. 196**

(supervisor's statement, *if you're going to work overtime, you're not to talk U,* held unlawful threat)

5036-8334 Loss of jobs

B. E. & K., Inc. **252 NLRB No. 036**

(E's preelection response to Ees complaints about wages that they did not have to stay, that *it could be a lot worse* because they could be getting nothing, and that if they did not like state's low pay scales they could get out of state held unlawful implied threat of loss of jobs and interference with election)

B. E. & K., Inc. **252 NLRB No. 036**

(injection of idea of blacklist into E's preelection remarks by stating that other Es put Ees' names on it if they were affiliated with or voting for U held threat of loss of job opportunity with E and with other Es and, as such, interference with election; effect of E's disavowal that it would consider it as not intended as a true disavowal)

5036-8335 Harsher working conditions

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(supervisor's statement that if U came in things would change drastically, limitations would be placed on breaks, Ees would not be allowed to chit-chat, and office atmosphere would be much stricter)

Certain-Teed Insulation Company **251 NLRB No. 208**

(advising U's observer and president-elect of local that E would be more stringent in enforcement of break periods after election, violative, absent evidence that Ees in fact were abusing break periods in any way)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**

(E's threats to take away Ee breaks unlawful, where made in retaliation against Ees' U organizing activities and Es advanced no legitimate business reasons to justify threats)

American Sunroof Corporation; et al. **248 NLRB No. 038**

(threat that Ees would be on timeclock if U prevailed, unlawful)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**

(supervisor's telling Ee that if plant *went U,* he would have to take driver's test, violative)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**

(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(E's statement that if Ee went to a U lawyer, as she claimed she would, that it would be made so hard for her she would have to quit, unlawful, even though E's statement was perceived as a joke by Ee, since statement amounted to threat of reprisal and, in context of E's other ULPs, could not be dismissed as isolated or not being implemented because statement was made in joking manner)

John Skura, William Donofrio and Margaret Dubas t/a Boulevard Associates d/b/a Sheraton Inn **JD-386-80**

(threatening Ee with more stringent inspection of her work in order to establish a reason for her discharge because of her U activities, violative)

Huron Copysette, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**

(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

5036-8338 Rescheduling of working hours

Nice-Pak Products, Inc. **248 NLRB No. 173**

(where during U campaign, E changed start of work week for 3rd shift from Monday to Sunday night as Ees had previously requested violated Act)

5036-8339 Loss of access to management

Conagra, Inc. **248 NLRB No. 085**

(statement that E would not talk to individual Ees but only to shop stewards about grievances, unlawful as threat of more difficult working conditions)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**

(threatening Ees with loss of access to management if U became Ees' representative, unlawful, where E conveyed message to Ees by letter on day before election that if U represented Ees, Ees could not deal directly with E and E would be legally obligated to deal solely through U regarding all aspects of Ees' terms of employment; E thereby misstated Ees' statutory rights under Sec. 9(a))

5036-8341 Withdrawal of privileges

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**

(E's threats to take away Ee breaks unlawful, where made in retaliation against Ees' U organizing activities and Es advanced no legitimate business reasons to justify threats)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**

(informing Ees that personal leave for doctor and dental appointments would no longer prevail if U was elected, unlawful)

5036-8343 Denial of vacations benefits

Climate Control Corporation **251 NLRB No. 102**

(threatening Ees with denial of vacation benefits because of U, violative)

5036-8345 Withholding of promotion

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(supervisor's statement that he could no longer support Ee's application for management position because of Ee's U activities unlawful, notwithstanding supervisor's later repudiation of remarks)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(supervisor expressing desire to see Ee in management position, but at same time informing Ee that if Ee aspired to management position Ee had better change her ways, unlawful)

5036-8345—Cont.

The Pacific Telephone and Telegraph Company **JD-(SF)-322-80**
(supervisor's response to U steward presenting grievances that he was a troublemaker and troublemakers would not get far in the company held unlawful threat to job tenure or chances for advancement)

5036-8347 Loss of profit sharing

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(telling Ees that they could lose both their profit-sharing and pension benefits if U came in, violative)

5036-8348 No wage increase

Dillman Foods, Inc. **253 NLRB No. 114**
(statement that because of U campaign E would withhold previously scheduled seniority raises, violative)

I/O Optics Limited, U.S.A. **251 NLRB No. 037**
(exhibiting to group of Ees, paper containing names of Ees scheduled to receive pay raises, unlawful since it amounted to implied threat that continued U activities would result in loss of scheduled pay raises)

St. Francis Hospital **249 NLRB No. 017**
(no raise until U activities cease)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

Penz Tool and Manufacturing Co., Inc. **JD-644-80**
(implied threat that potential raises were adversely affected by fact that ULP charges had been filed with Bd, unlawful where such conduct clearly had tendency to direct anger of Ees at ones they might believe caused such problem and to inhibit such Ees from exercising their own protected concerted rights)

Round Table Enterprises Inc. t/a Thrift T Mart **JD-(NY)-62-80**
(statement to Ee that another Ee would not get raise because *he's starting trouble around here, with this union,* violative)

The Marley Heat Transfer Company **JD-(SF)-263-80**
(no violation where E who recently purchased plant promised that new wages and benefits package would take effect on certain date but before election told Ees that if U won, E would negotiate with U concerning wages and benefits, where E's package was *discretionary* and amount had not been determined before advent of U or election)

Werth Engineering, Inc. **JD-295-80**
(where E had no established practice of granting wage increase its refusal to grant promised raise not violative where because of U activity taking place to grant it would be violative)

N.L.R.B. v. Midland National Life Insurance Company **621 F.2d 901 (C.A. 8, 1980)**
(threatening Ees with loss of salary increases and other benefits, unlawful)

5036-8349 Financial loss

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(violation where E made reference to strike in the event of U coming with consequence of loss of pay to Ees)

Alenco, A Division of Redman Building Products, Inc. **251 NLRB No. 067**
(personnel director's remark that U *was going to have to wind up going to Board to get* requested wage information concerning asserted unilateral reduction in pay rates of certain Ees, and that it could take years not violative, since remark was no more than statement reflecting U's legal right to avail itself of Bd's processes to obtain requested information)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's response that Ee *got the picture* when asked by Ee if it meant Ees' paychecks after E had stated that he would not take matter of Ees' U activities lightly, unlawful)

5036-8350 Reduction in pay

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(threat of lower classifications and thus of lower wages with U, unlawful)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(threat to reduce waitresses' wages if Ees supported U, unlawful)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(threat to reduce all wages to minimum wage if U won election, unlawful)

5036-8354 Reduction in work

Pacific Intermountain Express **250 NLRB No. 180**
(violation where E removed customer accounts from Ee and told other Ees that it had done so because of customer's demand that U sales representatives not service them)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(threatening to cut Ees' hours from 40 to 20 per week because of prospective unionization of warehouse, violative)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation, where during pre-election period supervisor told Ee that E was *screwing* Ees but it could not be proved, and that Ees' hours would stay cut until U matter was cleared up)

Sullivan Transfer Co. **247 NLRB No. 117**
(E's statement to Ee that if he continued to be represented by U it would result in significant reduction in number of hours worked violated Act)

5036-8355 Issuing warnings

Herman Brothers, Inc. **252 NLRB No. 121**
(supervisor informing Ee who had been given permission to take off next day that if Ee, who opposed ratification of proposed contract, went to U hall next day Ee would be given warning letter for excessive absenteeism, unlawful, since supervisor never denied Ee had previously been given permission to take day off and E's concern was that reason Ee wanted to be off was to attend tally of mail ballot on contract ratification)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(warning Ees that if they honored picket line of U representing other Ees at E's plant they would be in violation of no-strike clause and would be charged with unexcused absences, unlawful, since there was no waiver by terms of contract or on basis of bargaining history of Ee's right to engage in sympathy strike or to refuse to cross picket lines of another U)

5036-8357 Stricter enforcement of rules

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(E's statement that work rules, especially in regard to punctuality would be tightened up in event of unionization, unlawful)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement that if U came in things would change drastically, limitations would be placed on breaks, Ees would not be allowed to chit-chat, and office atmosphere would be much stricter)

GE's Trucking, Inc. **252 NLRB No. 131**
(E's statement that presence of U would require more stringent application of work rules presently enforced leniently held unlawful threat of reprisal)

5036-8358 Refusal to reinstate strikers

Peat Manufacturing Company **251 NLRB No. 153**
(telling economic strikers that *they were not going to get their jobs back,* violative, since they were entitled their jobs once strike had ended, they applied for reinstatement and openings for which they were qualified became available)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, after Ees went on strike to protest E's ULP, E was accurately quoted in newspaper as having said that Ees hired to replace strikers were permanent and that E planned to replace all strikers; E's comments constituted threats not to reinstate ULP strikers)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(violation where E threatened with discharge, and delayed reinstatements of, several Ees who were engaged in ULP strike)

5036-8359 Refusal to recall laid off employees

Hart Ski Mfg. Co., Inc. **JD-11-80**
(violation, where E's owner, at least indirectly, threatened that laid off Ees would not be recalled until contract offered by E had been accepted by stating he had to have some basic understanding of where Ees were going and whether they would accept management's proposal before company could start calling laid off Ees back to work)

5036-8366 Shut down or removal of plant to new location

Riley-Beaird, Inc. **253 NLRB No. 085**
(E's unrelenting message to Ees, through speeches, slides, and posters, constituted implied threat to Ees that selection of U would result in plant closure, where E's campaign theme was inevitability of bargaining table disagreement, resultant strike and ready alternative of plant closure and removal)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(threat to move machinery out of building if it was necessary for everyone to join U, unlawful)

5036-8366—Cont.

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

Han-Dee Pak, Inc. **249 NLRB No. 107**

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(threat immediately before U election of closing plant and moving its production to another plant, violative)

5036-8368 Reorganization of method of doing business

Chester Valley, Inc. **251 NLRB No. 190**
(telling Ees that, because of costs that could occur if U came in, E would have to cut corners somewhere and possibly this would be done by turning E's gasoline station into self-service facility, unlawful)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

5036-8370 Replacement of strikers

Piezo Technology, Inc. **253 NLRB No. 122**
(reading prepared speech to Ees that if Ees engaged in economic strike and were replaced, Ees will lose their Ee status, violative)

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(E telling strikers if they did not report to work in half hour they would be terminated and their insurance cancelled, violative, as it is threat of reprisal for engaging in protected activity)

Huron Dressed Beef, Inc. **252 NLRB No. 031**
(refusal to reinstate economic strikers except as new hires with starting wages and w/o seniority and accured vacation, medical and other benefits, and hiring *permanent replacements* in place of those strikers who did not accept offer to return to work as new hires, violative)

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired later, would be as new Ee held violative, since action interfered with Ees' rights)

Mather Federal Credit Union **JD-(SF)-8-80**
(telling ULP strikers that they were permanently replaced)

5036-8375 Sale of business

Allen-Stone Boxes, Inc. **252 NLRB No. 171**
(reporting to Ees prospect of sale of business, merger of operations, or jobbing out of work if U came in, violative)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(E vice-president's unequivocally stating to Ee that *if the Union got in---he would sell the equipment and all of us drivers would be without a job,* violative)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(threats to discriminatee and other Ees that it would be discriminatee's fault if E had to sell business and Ees lost their jobs because of discriminate's resort to Bd processes, unlawful)

5036-8379 Shutdown or liquidation of business

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(threatening Ees with closure of its shop or business if they selected U, unlawful)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(telling Ees that by having U, cost of coats would be so high that nobody would buy them and there would be no point in making them, violative)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(telling Ees that predecessor company went out of business because of U, violative as it was analogy as to what would happen if U won)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor informing Ee he felt sorry for her and asked what Ee would do if office closed down as result of unionization, unlawful)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(violation where E told Ee that all U wanted was to take $10 a month from the workers, and before he got U, he would prefer to close up shop)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(violation where supervisor warned Ees that if U got in E would probably sell out to another company and that it wouldn't do Ees any good if U got in because plant manager had guaranteed supervisors at meeting that if U got in E would refuse to negotiate U contract)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(declare bankruptcy)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**
(E's threat to close plant if Ees failed in attempt to decertify U, unlawful)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president threatening closure of plant if Ees changed bargaining representative since E could not meet wages and benefits in U's agreements with large companies, unlawful, where he made no reference to availability of collective bargaining since E could not be compelled to agree to terms it could not economically meet)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where E's agent, relayed to Ees that E president stated that *he was going to close the place down* if U was voted in)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(threat to close plant if U representative filed grievance or if E did not get open shop)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(statement to assembled Ees that E was closing plant amounted to unlawful announcement of economic reprisal for support of U's bargaining position, particularly absent explanation of economic basis for E's decision)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(threatening that plant would close down if U's campaign were successful, violative)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(stating to Ee, in response to her statement of U support, that E's warehouse was full of E's finished product, unlawful, notwithstanding E's attempt to repudiate initial statement, where E's statement was well understood code for economic troubles meaning layoff of Ees and implied that U activity could result in plant closure or layoff)

C-F Air Freight, Inc. **247 NLRB No. 060**
(E's statements threatening to close plant, unlawful, where statements conveyed impression that decision to close plant would be made after Ees selected U as representative, E's stated economic reasons as basis of lawful prediction relative to plant closing remarks were spurious, at time statements were made Ees had not even approached U and E was not confronted with contract demands, and continuation of E's facility for over 7 years of financial losses does not support claim that E's statements were merely predictions)

Thermo King Corporation **247 NLRB No. 048**
(E's speech to Ees in which he assertedly deviated from written speech and made extemporaneous statements threatening Ees with plant closure and loss of jobs if U won election, not unlawful, where Ees' testimony containing discrepancies and showing inability to remember substance of speech, was discredited, and only 2 out of over 500 Ees testified regarding anti-U deviations which at least a few other Ees might also have recalled)

Thermo King Corporation **247 NLRB No. 048**
(E's preelection letter published in monthly newsletter assertedly threatening Ees with plant closure if U won election, not unlawful, where letter did not contain such threat and was merely summary of recent events with concluding comments that until outcome of election was known, it would be difficult for E to project plant production for near future since he did not know what changes would occur with unionization and invited Ees to consider for themselves consequences of unionization)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's truthful representation to Ee prior to election that E had acquired some machinery from defunct operations which had failed because of economic hardships that had befallen such enterprises due to excessive U bargaining demands held not unlawful threat to close plant and not interference)

Galax Apparel Corporation **247 NLRB No. 026**

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E informed Ees in letter prior to election that if Ees selected U as representative E would have to spend time fighting U rather than obtaining orders and remaining competitive in industry, and conse-

5036-8379—Cont.

quently plant would close, at no point suggesting possibility of collective bargaining)

RMX, Inc. **JD-583-80**

(threat of plant closure if Ees selected U, unlawful)

Round Table Enterprises Inc. t/a Thrift T Mart **JD-(NY)-62-80**

(supervisor's advising Ee not to pass out any U cards because E would close store and E's telling Ee that *if union does come into store, I will close it,* violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**

(comment that E would close plant if U failed to agree on E's position on insurance rate increase and its position on reduction of work force, not unlawful, where E clearly indicated during negotiations that it was in bad financial condition and offered to show corporate books to verify claim)

Neckover Trailer Manufacturing Company **JD-256-80**

(supervisor's statement to Ee that he thought E would close plant if U came in, not unlawful, where statement was in response to Ee's request for his opn on advent of U into plant, and was not coercive nor threatening but constituted everyday dialogue between Ee and supervisor as to pros and cons of unionism)

Lika Corporation **JD-(SF)-69-80**

(warning that all of E's management personnel would quit if U came in, violative as threat that plant would shut down if U came in)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**

(supervisor's stating on election day that *after today probably everybody will be standing in the unemployment line,* or that *after today probably none of us will be working here any more,* held not threat of plant closure because of Ee U activity; at most, the statement constituted prediction or warning of unemployment w/o regard to outcome of election)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**

(supervisor's stating, in answer to Ee's question as to what would happen if U won election, that *whatever way it goes, we'll all be out of work,* that they would both be out of a job, that *it would all be over with,* or that *whatever way it goes it will all be over with,* held not threat of discharge or plant closure if U won election; at most the statement indicated either that there would be more loss of jobs regardless to outcome of election, or that campaign would be over once election took place)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**

(supervisor's telling Ee, *In fact, E would go out of business if they had a union,* and if *...the union was voted in, that the mill would have to be shut down about a week to have negotiations,* violative, since remarks imply that E would unilaterally choose to close down its plant during negotiations)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(foreman's statement that E would close plant if Ees supported outside U rather than supporting Ee committee and accepting E's contract proposals made to committee and directly to Ees, unlawful, notwithstanding contention statements were casual and that E quickly disavowed them and foreman was demoted, since there was neither plantwide repudiation nor cessation of conduct afterwards)

Cardinal Heating and Cooling, Inc. **JD-835-79**

(it may be assumed that threat of plant closure, though made to only one Ee, will be communicated to others in small unit of Ees)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**

(E's telling Ees that its restaurant would have to close if it became unionized, violative)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**

(E's notices, letters to Ees, and meetings with Ees at non-U plant regarding closing of E's nearby U plant held to convey unlawful implied threats where Ees' understanding of Ee's message was that closing of U plant was result of its unprofitability, that U victory in election at their plant would make it unprofitable leading to same result, and E's arguments regarding leaking of information about closing of plant did not justify its actions)

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. **620 F.2d 1120 (C.A. 5, 1980)**

(pre-election statements threatening plant shutdown if U won election w/o comments about profitability or business necessity, except to one Ee, unlawful)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**

(threat to close plant because Ees were stabbing E in back by their U activists)

Huron Copysette, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**

(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

5036-8380 Closure of department, facility, etc.

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(violation, where supervisor stated, in reply to question as to whether U coming in would cause closing of credit facility of retail store chain, that it would take only two days to transfer accounts to another location)

Behring International, Inc. **252 NLRB No. 055**

(E, through Ees acting as its agents, unlawfully threatened Ees during Ee meeting by stating that Ees' warehouse work would be subcontracted or E's operation would be closed if election was conducted and U would be voted in)

Behring International, Inc. **252 NLRB No. 055**

(E, through Ees acting as its agents, unlawfully threatened Ees during Ee meeting by stating that Ees' warehouse work would be subcontracted or E's operation would be closed if election was conducted and U would be voted in)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**

(supervisor's statement that if Ees came in one day and did not have work that they would be sent home for a few days w/o pay, unlawful as threat to Ees that if they supported U there might not be any work and Ees would be laid off w/o pay)

5036-8381 Transfer to another job or shift

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(U council's threat to transfer Ee-staff member to different location in his assignment of servicing U locals, unlawful, where action was in retaliation for his protected U and concerted activities; action came on heels of unlawful suspension of Ees for attending U meeting and for soliciting aid outside of labor organization, and closely followed council's attempt to prevent second U meeting involving U's attorney called to address, among other things, Ees' suspensions)

Conagra, Inc. **248 NLRB No. 085**

(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat,* unlawful)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**

(threats to change job assignments of certain Ees immediately after U representatives requested recognition held violative where evidence on record supports conclusion that Ees could reasonably infer, due to timing, that threats were directed towards their decision to join U)

5036-8384 Subcontracting

Allen-Stone Boxes, Inc. **252 NLRB No. 171**

(reporting to Ees prospect of sale of business, merger of operations, or jobbing out of work if U came in, violative)

St. Francis Hospital **249 NLRB No. 017**

Clements Wire and Manufacturing Company, Inc. **JD-338-80**

(supervisor's statement that if Ees came in one day and did not have work that they would be sent home for a few days w/o pay, unlawful as threat to Ees that if they supported U there might not be any work and Ees would be laid off w/o pay)

5036-8387 Transfer of work elsewhere

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(violation, where supervisor stated, in reply to question as to whether U coming in would cause closing of credit facility of retail store chain, that it would take only two days to transfer accounts to another location)

5036-8391 Implied or veiled threats

Centre Engineering, Inc. **253 NLRB No. 028**

(E's statements that selection of U as bargaining representative would result in same end as another E (where many jobs were lost) violative as implied threat)

B. E. & K., Inc. **252 NLRB No. 036**

(E's preelection response to Ees complaints about wages that they did not have to stay, that *it could be a lot worse* because they could be getting nothing, and that if they did not like state's low pay scales they could get out of state held unlawful implied threat of loss of jobs and interference with election)

Maywood, Inc. **251 NLRB No. 139**

(violation where supervisor asked active U advocate, who complained to supervisor about E policies with respect to Ees, if she was so unhappy with E, why didn't she quit, adding *why don't you just hit the timeclock right now?*)

Blue Bird Body Company **251 NLRB No. 196**

(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

Blue Bird Body Company **251 NLRB No. 196**

(audio slide presentation to all eligible voters, violative where remarks of Ee participants in presentation impliedly threatened that U adherents would eventually be discharged for pretextual reasons)

5036-8391—Cont.

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(E's statement to Ee that he was creating a *hell of an image... and not helping yourself* by filing charges with Bd and grievance under contract, and that Ee should drop his charges with Bd, and that he could not win and was hurting himself in E's eyes, unlawful)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**

(threatening Ee with charge of insubordination if she refused to participate in Ee interview w/o another Ee being present as witness, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(E's president informing Ee that Ee was on his list of suspected U sympathizers and asserting he would not let any young girls take over and run his business, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(supervisor informing black Ee that white Ees were trying to pin responsibility for U effort on her in order to save their own jobs, unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(supervisor's statement to Ee that her daughter was being trained to do work Ee was performing, unlawful)

Custom Coating & Laminating Corporation **249 NLRB No. 117**

(E who told Ees that he might attend U meeting violated Act)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

(telling Ee that if he wanted to work only Monday through Friday and not on Saturdays he would have to find employment at U shop held violative as veiled threat that shop would never have U agreement)

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**

(remark to Ees expressing hope that they were not involved with U, unlawful, where remark was made by one with authority of supervisor and, following as it did by one day layoff of prime U promoter, it conveyed to Ees that same could happen to them if they were involved)

Pacific Coast International Meat Co. **248 NLRB No. 183**

(supervisor informing Ee that from now on she would have to do exactly as he ordered, unlawful, where in reprisal for her leadership in lodging C regarding his supervision)

Fluid Packaging Company, Inc. **247 NLRB No. 196**

(threat of trouble for mechanics if U got in, because *they evaluate the mechanics* held barely concealed threat of retaliation in form of more stringent evaluations)

C & G Coal Corporation **247 NLRB No. 179**

(telling Ee who asked if he could join U to ----*go on and not cause any more trouble*, held violative)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**

(E's statement that he wished to hire new Ees made w/o explanation during period of U activity is veiled threat of discharge as it indicates that E intends to replace some or all existing Ees because of their U activity)

Tartan Marine Company **247 NLRB No. 073**

(supervisor asking Ee who was member of U organizing committee if he had heard anything about anyone trying to organize U in plant, and what Ee thought about it, and upon Ee replying he was undecided stating he hoped Ee was not making mistake, unlawful)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**

(statement to Ees, who had voiced complaints about paucity of mentioned raise and E's broken promises concerning merit increases, that Ees should get out if they did not like what they were receiving, violative)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**

(veiled threat that facility would close if organizational drive continued, unlawful)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**

(statement that if U were voted down things would go on as before held thinly veiled threat that Ees would risk reprisals or detrimental changes if they selected U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(orientation statement including reference to *serious harm* that might befall Ees if they chose U, unlawful, in view of E's other ULPs, history of anti-U activity, and fact statement was primarily read to new Ees by personnel official in his office which was setting conducive to coercion)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**

(drawing line between prediction and implied threat is often one of great difficulty, and possibility that statement contains implied threat must be viewed from Ees' point of view; for that reason Bd expertise is particularly relevant to determination of whether latent threat lies hidden in E's words, while ct's scope of review is limited to inquiry whether Bd's determination is reasonable and supported by substantial evidence)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**

(E's notices, letters to Ees, and meetings with Ees at non-U plant regarding closing of E's nearby U plant held to convey unlawful implied threats where Ees' understanding of Ee's message was that closing of U plant was result of its unprofitability, that U victory in election at their plant would make it unprofitable leading to same result, and E's arguments regarding leaking of information about closing of plant did not justify its actions)

5036-8395 Limitation on or withholding of bonus or pay raise

I/O Optics Limited, U.S.A. **251 NLRB No. 037**

(exhibiting to group of Ees, paper containing names of Ees scheduled to receive pay raises, unlawful since it amounted to implied threat that continued U activities would result in loss of scheduled pay raises)

P. A. Incorporated **248 NLRB No. 077**

(threatening to withdraw announcement wage increases if Ees continued to fight for U, violative)

J. H. Block & Co., Inc. **247 NLRB No. 041**

(loss of vacation pay and Christmas bonus if U was selected)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**

(E president stating to Ees during pre-election E's *captive-audience meeting* that there would be no Christmas bonus that year, that the funds that would otherwise be used to pay Christmas bonuses would be used to pay his attorney's expenses in opposing U, and that other benefits were to be terminated, violative)

5036-8399 Other

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**

(threat to execute contract with favored U whether or not Ees wanted it to represent them and to discharge Ees who did not join it w/i 30 days, unlawful)

Chester Valley, Inc. **251 NLRB No. 190**

(telling Ee that U might require physical examination and that Ee might have trouble passing because of poor eyesight, and telling all Ees that U contract might require physical examination and E was sure some Ees, because of physical defects, would not be able to pass, unlawful)

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

(threatening to discharge replacement Ees if they failed to decertify U, unlawful)

5042 FORMS OF BENEFITS IN CONDITIONS OF EMPLOYMENT, OR PROMISES THEREOF

5042-0100 Generally

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's agreement to *look into* installation of soft drink vending machine, not unlawful, since no definite promise and drinks had previously been available from refrigerator)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(claim that improvements were made during U campaign in order to make benefits consistent with those elsewhere in E's operations is no defense unless benefits are already existing or E had made a final decision to put benefits into effect regardless of U campaign)

5042-0116 Coercive impact of benefits to dissuade employees from unionization

Gordonsville, Industries, Inc. **252 NLRB No. 054**

St. Francis Hospital **249 NLRB No. 017**

(working conditions would improve if U lost election)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**

(raises given to remaining Ees 1 day after unlawful discharges of 4 U supporters violative as given for purpose of discouraging U activity)

5042-0133 Timing

5042-0133-1100 During union organizing period

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**

(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected, where U activity was taking place at only small part of E's enterprises)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**

(during U campaign, offering U sympathizer promotion to dissuade Ees from organizing U, held violative)

Don Pizzolato, Inc. **249 NLRB No. 136**

(paying Ee money owed to him from prior underpayment for job performed not violative where valid debt existed prior to election campaign)

Peavey Company **249 NLRB No. 110**

5042-0133-1100—Cont.

(E changing policy on day after it learned of organizing campaign to allow Ees to see their personnel files, unlawful)

Peavey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

K & B Mounting, Inc. **248 NLRB No. 071**
(E's promise of new benefits and later grant of promised benefits, violative in view of timing of both announcement and establishment of the benefits soon after U's demand for bargaining)

5042-0133-1300 During critical preelection period

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(announcement of E sponsored profit-sharing retirement plan on day before election violative, notwithstanding plan was agreed upon earlier since plan required IRS approval and until such approval received E's conduct amounts to bestowal of nonexisting benefit)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Chester Valley, Inc. **251 NLRB No. 190**
(retroactivity of wage increase held lawful since it was disassociated from election campaign, where E's letter to Ees stated that increase would be retroactive because Ees should not be made to suffer by reason of R ptn whose filing had been reason for Ees' failure to receive increase by prior date, and E's explanation was plausible and was probative evidence of E's motive)

Don Pizzolato, Inc. **249 NLRB No. 136**
(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

St. Francis Hospital **249 NLRB No. 017**
(promise of benefits explicitly or implicitly contingent upon election outcome violative)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(granting Ee pay raise w/i day of election for good job performance when she was entitled to it, expected it and requested it, not unlawful)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(announcement and grant of pension plan day before election not violative, where plan was conceived prior to U campaign, completion of plan was not accelerated in response to coming election, and announcement of plan was made in normal course of business)

Connecticut Foundry Company **247 NLRB No. 145**
(increase granted immediately prior to election while Ees were on strike violative)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(wage and meal allowance increases during critical pre-election period, unlawful where granted in response to U campaign)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(E who revoked written warning to Ee 1 week prior to election with purpose of causing Ees to reject U as their bargaining representative violated Act)

Lika Corporation **JD-(SF)-69-80**
(quarterly bonus not violative where consistent with past practice notwithstanding it was given 2 weeks prior to election)

5042-0133-2500 After election while objections or challenges are pending

Gordonsville, Industries, Inc. **252 NLRB No. 054**

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(25 cent across-the-board increase given to all Ees shortly after election, not just those who were entitled to it due to raising of statutory minimum wage, violative as reward to Ees for having rejected U and also attempt to influence results if second election were ordered)

5042-0133-5000 Formulated prior to union's request for recognition

Peavey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

5042-0133-7500 Formulated after union's request for recognition

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

5042-0133-8000 Prior to decertification election

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(telling Ees prior to decertification election that if there was no U E could be more lenient with apprentices who failed test, rather than having to comply with procedures dictated by U)

5042-0167 Practice of similar changes

Stanley M. Feil, Inc. **250 NLRB No. 065**
(granting of wage increases, after ULP complaint set for hearing, not unlawful, notwithstanding lack of precise consistency in time between prior increase and fact increases granted because of increase in minimum wage and to compensate for inflation)

Permanent Label Corporation **248 NLRB No. 021**
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

Tartan Marine Company **247 NLRB No. 073**
(granting of wage increases after E learned of U campaign, not unlawful, where E had consistent policy of granting wage increases notwithstanding somewhat larger number of Ees received them than usual for period)

5042-0183 Solicitiation of grievances implied promises benefits by correction

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

Chester Valley, Inc. **251 NLRB No. 190**
(E's speech to Ees, as a whole, including reference to *open door*, unlawful, since, unlike case in which E did not promise to redress grievances but merely indicated that it would follow its previously established policies, E herein had never told Ees about any *open door* policy it may have had and indicated that in future E would regard Ees' requests more favorably than in past)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(although E made no specific promises to Ees, E held to have unlawfully solicited Ee grievances and impliedly promised to rectify them in order to discourage U activities)

Certain-Teed Insulation Company **251 NLRB No. 208**
(violation where there was implied promises to remedy grievances solicited during management consultant interviews with individual Ees)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(E's vice-president asking Ees, during period of U campaign, *what their problems were* and impliedly promising to remedy them held violative)

St. Francis Hospital **249 NLRB No. 017**

Permanent Label Corporation **248 NLRB No. 021**
(E's recitation of *no promises* formula or statement that it was precluded from making commitments, does not cancel inferences that grievances solicited in pre-election context would be corrected)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(violation where E interrogated Ees and remedied identified grievances)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation where, in course of anti-U campaign meeting, E's attorney asked Ees to discuss their grips against E; the attorney was soliciting grievances and E did nothing to rebut presumption that it was promising to remedy such grievances)

CTS Keene, Inc. **247 NLRB No. 141**
(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Houston County Electric Cooperative, Inc. **247 NLRB No. 087**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

5042-0183—Cont.

(speech stating that conditions could *be improved and corrected* by *pulling together*, thereby implying that rejection of U would result in improvements, coupled with subsequent solicitation and offer to remedy grievances, held unlawful promise of benefits for rejecting U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(violation, where E solicited complaints and grievances and implicitly promised their correction not solely for legitimate business reasons, but rather to convince Ees that grievances could be resolved w/o U)

J. H. Block & Co., Inc. **247 NLRB No. 041**

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(telling Ees that if they did not tell E what was wrong in plant, E could not correct it; and invitation to Ees to discuss their problems, made in context of E's anti-U speech at meeting with Ees, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(solicitation of grievance itself is not coercive, but promise to correct grievance or a concurrent interrogation or polling about U sympathies is unlawful; solicitation of grievances merely raises inference that E is making such a promise)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

Liberty Vinyl Corporation **JD-(SF)-268-80**
(soliciting grievances at meetings during U campaign with labor relations consultant and interpretor not violative, where consultant gave general disclsimer that he had no power to correct grievances but would pass them to management and E, who had held previous meetings where Ees were invited to discuss problems and make recommendations, did not deviate from past practices)

Falconer and Sons **JD-(SF)-232-80**

Werth Engineering, Inc. **JD-295-80**

Palomar Transport, Inc. **JD-(SF)-158-80**
(solicitation of grievances unlawful, where solicitation was not shown to have been established practice and impliedly held promise of rectification, thereby obviating need for U representation)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(ct could not disregard finding of Bd that creation of telephone hot line was intended and understood to be solicitation of grievances and implied promise that those grievances would be remedied and was unlawful)

5042-3300 Forms of benefits

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(wage increase granted during pendency of R ptn to segment of Ee complement held violative where E failed to overcome *strong presumption of (its) illegality*)

5042-3310 Paid holiday or other holiday arrangements

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(granting Friday, July 5, as paid holiday prior to election, not unlawful, where E had established policy to grant additional paid holiday when normal holiday fell on a Tuesday or a Thursday)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(E's invitation to all Ees and their families to outing for which E paid admission fees and provided free lunches was benefit with intended effect of influencing votes in violation of 8(a)(1))

N.L.R.B. v. Swedish Hospital Medical Center **619 F.2d 33 (C.A. 9, 1980)**
(E's grant of one day vacations to nonstrikers and not to strikers upheld by ct as interference with Ees' right to strike and independent 8(a)(1) violation w/o passing on validity of Bd's findings of 8(a)(3) and (5) violations thereby; ct found grant not so insignificant as not to affect Ees' participation in future strikes and any justification, even if legitimate, would be insufficient to outweight Ees' interest in uninhibited strike activity

5042-3320 Insurance

Stanley M. Feil, Inc. **250 NLRB No. 065**
(insituting hospitalization insurance, unlawful, since for purpose of interferring with U activity where Ees were still wearing U buttons and E referred to fact U campaign was *apparently* over and not to assertion that campaign *was* over)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(institution of medical insurance program planned prior to beginning of U activity and not instituted until 6 months after it began not violative where it was instituted for all unit and nonunit Ees as well as supervisors w/o any mention of U activity)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(granting $20,000 life insurance policies to Ees 7 days before election, unlawful where granting of policies was done in effort to persuade Ees not to support U)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

5042-3330 Retirement benefits

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(announcement of E sponsored profit-sharing retirement plan on day before election violative, notwithstanding plan was agreed upon earlier since plan required IRS approval and until such approval received E's conduct amounts to bestowal of nonexisting benefit)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters)8250 NLRB No. 1339(implementation and announcement of improved retirement plan held not unlawful or objectionable conduct where plan was developed and adopted prior to beginning of U activities with timing of its announcement determined by economic, not U-related matters)

5042-3335 Improvement of plant facility

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's improvement of lighting in its warehouse, not unlawful, where it had been working on improvement prior to onset of U activity)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(timing of announcement and granting of expanded break time and improvements in plant lunchroom facilities, unlawful, where E failed to adequately explain timing of changes in midst of U campaign after receipt of grievances on matters which E solicited unlawfully for purpose of responding to U campaign)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(construction during U campaign of nursing station providing improved medical treatment at plant, not unlawful, since legitimate business reason existed for improvement where there were no complaints from Ees about lack of nursing station, timing was compatible with construction of other stations in E's operations and corporate-wide concern over Ee health problems, and its impact and relationship with U campaign was minimal)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of addition of lunch room and plans for improved food service for Ees prior to election, unlawful where calculated to dissuade Ees from voting for U)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's making improvements in restroom facilities, unlawful where made solely to persuade Ees to vote against U in upcoming election)

5042-3340 Promotion

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(transfer of anti-U Ee to better position where she lacked knowledge of requirements for job and E did not follow its own posting policy, violative)

5042-3345 Coffee break

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(timing of announcement and granting of expanded break time and improvements in plant lunchroom facilities, unlawful, where E failed to adequately explain timing of changes in midst of U campaign after receipt of grievances on matters which E solicited unlawfully for purpose of responding to U campaign)

5042-3346 Free meals

Don Pizzolato, Inc. **249 NLRB No. 136**
(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

5042-3350 Bonus

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(bonus paid nonstrikers only, unlawful)

Carbonex Coal Company **248 NLRB No. 107**
(promise to Ees of tonnage bonus if U was defeated)

5042-3350—Cont.

Permanent Label Corporation **248 NLRB No. 021**
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

Carbon Specialties, Inc. **JD-510-80**
(promising and giving Ees money bonus and a loan of money to one of them as inducement to defect from U, violative)

Lika Corporation **JD-(SF)-69-80**
(quarterly bonus not violative where consistent with past practice notwithstanding it was given 2 weeks prior to election)

5042-3360 Profit sharing plan

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(announcement of E sponsored profit-sharing retirement plan on day before election violative, notwithstanding plan was agreed upon earlier since plan required IRS approval and until such approval received E's conduct amounts to bestowal of nonexisting benefit)

5042-3365 Sick leave

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(reinstatement of prior sick leave policy which allowed Ees to be paid for unused leave violative where done in response to Ees displeasive over discontinuance of policy and in face of U activity)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(reinstatement of more favorable sick leave policy to induce Ees to withdraw support from U constituted interference and violation)

5042-3368 Loans

Carbon Specialties, Inc. **JD-510-80**
(promising and giving Ees money bonus and a loan of money to one of them as inducement to defect from U, violative)

5042-3370 Increased holiday and vacation benefits

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(grant of Ee's claim for holiday pay while stating that Ee was ineligible to receive it and thus effectively bribing Ee to vote against U, unlawful)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(informing Ees at non-U plant that they received 2 more paid holidays than Ees at U plant violative as it indicatedthat Ees who chose U R do not receive any additional benefits than would otherwise be granted to Ees in normal course of E's business)

5042-3375 Elimination of adverse working conditions

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**
(promising and granting improved working conditions to anti-U adherent, unlawful)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of addition of lunch room and plans for improved food service for Ees prior to election, unlawful where calculated to dissuade Ees from voting for U)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of plans to revise plant rules and regulations for Ees during peak of U organizational campaign, unlawful where made solely to dissuade Ees from supporting U)

5042-3378 Elimination of unpopular practices

The Krebs School Foundation, Inc. **251 NLRB No. 187**
(school's change in employment contract renewal policy from notification by mail to individual interviews at which time teachers were informed that their contracts would or would not be renewed for purpose of calming faculty so they would not feel need for U, violative)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where during U campaign, E changed start of work week for 3rd shift from Monday to Sunday night as Ees had previously requested violated Act)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of plans to revise plant rules and regulations for Ees during peak of U organizational campaign, unlawful where made solely to dissuade Ees from supporting U)

5042-3379 Redress of grievances

Omark-RCBS, A Division of Omark Industries **252 NLRB No. 089**
(E's statements requesting Ees to deal directly with management, asking for complaints or gripes and requesting opportunity to resolve problems, held violative since they constituted clear attempt to dissuade Ees from supporting U by soliciting grievances and holding out possbility of more favorable treatment)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

Americana Health Care Corporation of Ohio d/b/a Barberton Manor **252 NLRB No. 057**
(soliciting and remedying Ee grievances in attempt to deter U's organizational campaign, violative)

Behring International, Inc. **252 NLRB No. 055**
(E's recognition of grievance committee, formed at Ee meeting which certain Ees conducted as agents of E, held unlawful job benefit given before election to encourage Ees to abandon support for U and to seek redress of their job-related problems through alternative thus provided)

St. Francis Hospital **249 NLRB No. 017**

5042-3380 Wage increase

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(E's granting of wage increases two days after U demanded recognition, unlawful, notwithstanding E's contention that increases were instituted in order to make E's pay scale competive with other E's since E had opportunity to put increases into effect before U campaign)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

Chester Valley, Inc. **251 NLRB No. 190**
(retroactivity of wage increase held lawful since it was disassociated from election campaign, where E's letter to Ees stated that increase would be retroactive because Ees should not be made to suffer by reason of R ptn whose filing had been reason for Ees' failure to receive increase by prior date, and E's explanation was plausible and was probative evidence of E's motive)

Chester Valley, Inc. **251 NLRB No. 190**
(when wage increase is granted during election campaign, Bd regards increase as calculated to influence outcome of election and therefore unlawful, unless E sustains burden of showing that timing of increase was governed by factors other than pendency of election)

Chester Valley, Inc. **251 NLRB No. 190**
(pre-election granting of wage increases which were appreciably larger than those granted in previous years, unlawful, where E failed to sustain burden of showing that as to Ees receiving more than statutory minimum wage, size of increases was governed by other than pendency of election)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(granting general wage increase to all unit Ees timed for receipt immediately preceding voting period, violative)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected, where U activity was taking place at only small part of E's enterprises)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(wage increase given U adherent to induce him to refrain from U activities, unlawful)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(granting of wage increases, after ULP complaint set for hearing, not unlawful, notwithstanding lack of precise consistency in time between prior increase and fact increases granted because of increase in minimum wage and to compensate for inflation)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) **250 NLRB No. 133**
(ten-percent wage increase, which was not provided for and not outgrowth of wage survey initiated before U activities began but was granted after U activities began and one week before election, violative and objectionable conduct)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(wage increase granted during critical preelection period unlawful, where announcement was not made long before U's organizing campaign as claimed by E, and increase was not conferred consistent with past practice but was unprecedented for time of year it was granted)

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(across-the-board wage increase given after U activity began violative where immediately prior to start of U campaign E announced that increase was to be deferred for 3 months)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(25 cent across-the-board increase given to all Ees shortly after election, not just those who were entitled to it due to raising of statutory minimum wage,

5042-3380—Cont.

violative as reward to Ees for having rejected U and also attempt to influence results if second election were ordered)

Lyman Steel Company **249 NLRB No. 040**
(promising Ees wage increase if they withheld their support from Us, held violative)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(granting Ee pay raise w/i day of election for good job performance when she was entitled to it, expected it and requested it, not unlawful)

Connecticut Foundry Company **247 NLRB No. 145**
(increase granted immediately prior to election while Ees were on strike violative)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(announcing and granting wage increase coinciding with U activity violative in absence of evidence that it was granted pursuant to regular pattern or for legitimate business reason)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(raises given to remaining Ees 1 day after unlawful discharges of 4 U supporters violative as given for purpose of discouraging U activity)

Tartan Marine Company **247 NLRB No. 073**
(granting of wage increases after E learned of U campaign, not unlawful, where E had consistent policy of granting wage increases notwithstanding somewhat larger number of Ees received them than usual for period)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**

Keister Coal Company, Inc. **247 NLRB No. 049**
(E's granting inordinately large wage increase in face of U organizing activity held violative when compared to wage increases granted prior to advent of U)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(across-the-board wage increase to influence Ees to vote against U, unlawful)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(promise and grant of wage increases, not unlawful in view of E's practice of annual wage increases and no independent evidence to establish unlawf
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Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(E's response to Ees' questions that, if Ees voted in U, E must negotiate in good faith but did not have to sign contract if unable to agree to its

Byrne Sand & Gravel Co., Inc. **JD-314-80**
(no violation, where E when asked about attitude towards unionization replied he would pay U rate if he had a lot of U work, and when asked what E would do for Ees if they didn't go U, replied he couldn't promise Ees anymore than when hired but hoped that eventually they would get higher rate paid to Ees doing similiar work at another facility)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

5042-3390 Increase in working hours

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(promise of full-time employment to part-time Ee during U campaign not violative where Ee had been promised such employment prior to U campaign)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**
(promising Ee extra hours of work if he signed anti-U ptn, unlawful)

5042-3391 Job postings

Omark-RCBS, A Division of Omark Industries **252 NLRB No. 089**
(E's implementation of job bidding w/o central posting site in as yet uncompleted lunchroom was unlawful acceleration of conferring extremely important benefit for purpose of interfering with U organizing campaign notwithstanding said benefit agreed to prior to any U activity)

5042-3397 Overtime payments

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(payment for performing overtime side work to discourage U support, unlawful)

5042-3399 Miscellaneous benefits

Western Truck Services, Inc. **252 NLRB No. 096**
(promising Ees contract which *might contain better benefits* in order to undermine U's status, violative)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's agreement to *look into* installation of soft drink vending machine, not unlawful, since no definite promise and drinks had previously been available from refrigerator)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(reinstitution of policy of keeping soft drinks in refrigerator and installation of drink vending machine which was not used by Ees, not unlawful granting of benefits, since minimal difference whether drinks obtained from machine or refrigerator and drinks had been for sale from refrigerator previously)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(public announcement for first time, following U initiation campaign, that legal services of company officials was available for Ees' legal problems, unlawful)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Don Pizzolato, Inc. **249 NLRB No. 136**
(paying Ee money owed to him from prior underpayment for job performed not violative where valid debt existed prior to election campaign)

Hedison Manufacturing Company **249 NLRB No. 096**
(granting of week's wages to Ees, 2 weeks before election, for time they were snowbound at E's plant because of great snowstorm, not unlawful, where GC failed to prove that E was attempting to buy election and was not motivated to *do good* because of the emergency; however, granting of benefits w/o consulting U, unlawful, since change in terms and conditions of employment, even for the better, is subject of bargaining)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(announcing, presenting or distributing Ee handbooks for salaried Ees for purpose of disuading Ees from supporting or voting for U, unlawful)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(E's announcement to Ees that it had discharged both plant and production managers not violative absent evidence to show that they had mistreated Ees or how their discharges would benefit Ees)

Coastal Volkswagen, Audi **JD-(SF)-144-80**
(promise to release Ee from responsibility for automobile damage if he would sign contract promising to cease U activity, violative)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(promises of unilateral grant of binding arbitration as final stage of grievance procedure and of *preferred loan* plan immediately before U election, unlawful)

5042-6700 Promises or offers of benefits

5042-6701 Generally

The Dow Chemical Company, Texas Division **250 NLRB No. 102**

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(statement that E had done things in past incorrectly but would correct them in future, implying benefits, unlawful)

5042-6702 Nonspecific promise of benefit

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(promising Ee with improved benefits and higher pay if said Ee and other Ees did not support or select U, unlawful)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(supervisor telling Ee if he *wanted to keep working to stick with* E, unlawful since it amounted to both threat of discharge for supporting U and promise of benefit for opposing U)

Vantage Petroleum Corp. **247 NLRB No. 202**

5042-6702—Cont.

(E's inquiry as to whether individuals were interested in employment w/o U representation, not violative, where inquiry merely sought to see whether the individuals were interested in employment at E's stated terms and conditions or were insisting upon package deal)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that conditions could *be improved and corrected* by *pulling together*, thereby implying that rejection of U would result in improvements, coupled with subsequent solicitation and offer to remedy grievances, held unlawful promise of benefits for rejecting U)

C-F Air Freight, Inc. **247 NLRB No. 060**
(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

5042-6703 Implied promises

Chester Valley, Inc. **251 NLRB No. 190**
(asking Ees whether *more benefits, wages or whatever* would take to keep U out, unlawful)

St. Francis Hospital **249 NLRB No. 017**
(promise of benefits explicitly or implicitly contingent upon election outcome violative)

C-F Air Freight, Inc. **247 NLRB No. 060**
(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**

5042-6710 Improved working conditions

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

Peavey Company **249 NLRB No. 110**
(violation, where E's vice president informed Ee that he had not been aware of bad working conditions that Ees had opened his eyes and he was glad of this and was going to see that things got better, as it is promise of improved working conditions)

Keister Coal Company, Inc. **247 NLRB No. 049**
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

5042-6715 Promotion

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor expressing desire to see Ee in management position, but at same time informing Ee that if Ee aspired to management position Ee had better change her ways, unlawful)

Industry Products Company **251 NLRB No. 183**
(promise of promotion to supervisor to dissuade Ee from engaging in U activities, unlawful)

Pacific Intermountain Express **250 NLRB No. 180**
(E's telling Ee that many supervisory jobs *were cropping up all the time* while soliciting his help in defeating the U unlawfully implied that Ee could expect a better job if he did not support U)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(offering Ee promotion to dissuade Ees from organizing U, unlawful)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(during U campaign, offering U sympathizer promotion to dissuade Ees from organizing U, held violative)

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(promotion of *housekeeper* who was U adherent to *assistant executive housekeeper* a few days before election and where position of a second assistant executive housekeeper had not existed before, violative, since purpose of promotion was to curtail her U activities)

P. A. Incorporated **248 NLRB No. 077**
(promising Ee promotion and pay raise if he would get out of U, violative)

C-F Air Freight, Inc. **247 NLRB No. 060**
(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

Keister Coal Company, Inc. **247 NLRB No. 049**
(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

5042-6720 Job protection

Catalina Yachts **250 NLRB No. 048**
(promise that if E voted for E, it would see that he got his job back should he run afoul of immigration authorities)

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. **620 F.2d 1120 (C.A. 5, 1980)**
(election-eve promise of advanced training in operation of newly purchased machine in increasingly mechanized plant with decreasing manpower needs, unlawful as Ee could be expected to believe that training would help him to stay on job)

5042-6742 Premium pay plan

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(implied promise of piecework as incentive method of payment to increase earnings during pre-election period, unlawful)

5042-6745 Pension plan

Chester Valley, Inc. **251 NLRB No. 190**
(statement to Ee that he would be *way ahead* if payments which U wanted for pension plan were made into company-maintained profit-sharing plan, unlawful)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where supervisor told Ees, in context of discussion about disadvantages of U, that E was *working on a retirement plan*)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(announcement and grant of pension plan day before election not violative, where plan was conceived prior to U campaign, completion of plan was not accelerated in response to coming election, and announcement of plan was made in normal course of business)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(announcement of pension plan, contemplated since 2 months before start of U organizing campaign but announced after campaign had begun, unlawful, in absence of proof justifying E's reference to introduction of plan as part of its preelection campaign)

5042-6750 Insurance benefits

Smith Auto Service, Inc. **252 NLRB No. 068**
(violation where E president promised Ees benefits including raises, better medical plan, and installation of time clock if Ees rejected U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice announcing that E intended to improve existing insurance program, posted during U organizing compaign, not unlawful, where notice stated that new plan was to be effective companywide; unlike other benefits found to be violations, insurance plan was not subject of discussions during meetings or solicitation of grievances; no election was scheduled or even petitioned for; and there was no indication that there would be any better time for announcing companywide improvement)

Highland Foods, Inc. and Vickelda Industrial Corporation **JD-364-80**
(promise to improve medical insurance to induce Ees from engaging in U activity, violative)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(promise and grant of increased medical coverage, not unlawful in view of no independent evidence of unlawful motivation and no findings of other ULPs)

Lika Corporation **JD-(SF)-69-80**
(statement that E had been working for months to get Ees health insurance not violative as no defenite statement as to when Ees would get insurance was made and E had been looking into insurance prior to advent of U campaign)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**

5042-6750—Cont.

(promise to look into dental insurance program immediately before U election, unlawful)

5042-6765 Party

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's promise of victory celebration after election, not unlawful, since such remarks did not reveal promise of significant benefit that would have had more than minimal impact upon Ees' exercise of Section 7 rights)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(violation where E offered Ees free Christmas party in order to disuade them from activities on behalf of U)

5042-6770 Retirement fund

Neely's Car Clinic **249 NLRB No. 080**
(promise of specific type of retirement plan if Ees did not belong to U, violative)

5042-6775 Bonus

P. A. Incorporated **248 NLRB No. 077**
(promising to give Ees bonuses if plant were non-U, violative)

Keister Coal Company, Inc. **247 NLRB No. 049**
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

Carbon Specialties, Inc. **JD-510-80**
(promising and giving Ees money bonus and a loan of money to one of them as inducement to defect from U, violative)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(promise of plant-wide bonus systems immediately before U election, unlawful)

5042-6779 Tuition payment

Lika Corporation **JD-(SF)-69-80**

5042-6780 Wage increase

Pandair Freight, Inc. **253 NLRB No. 134**

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(promising Ee with improved benefits and higher pay if said Ee and other Ees did not support or select U, unlawful)

Smith Auto Service, Inc. **252 NLRB No. 068**
(violation where E president promised Ees benefits including raises, better medical plan, and installation of time clock if Ees rejected U)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(formal promise to grant specific wage increase to avoid unionization, violative, notwithstanding that prior to organizing campaign E made vague promise of wage increase)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(promise of economic benefits and resolution of Ees' complaints to encourage Ees to refrain or withdraw their support from Us, violative)

Patsy Bee, Inc. **249 NLRB No. 125**
(no violation by denial of alleged scheduled wage increase where evidence did not establish existence of either authorizative promise of wage increases to specific Ees at specific times or failure to abide by established practice; inference that some Ees were frustrated insufficient to establish U-related improper motivation)

Peavey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(E's granting of wage increases shortly after U's second filing of R petn, not unlawful, notwithstanding E's previous ULPs including unlawful layoff and financial losses where increase decided on and announced to Ees prior to knowledge of renewed U activity and antedated second ptn by almost two months coinciding with improvement of E's financial condition)

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(promise of 15-cent wage increase every 6 months if their bargaining representative agreed to open shop proviso, unlawful)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(E's sending Ees letter advising them of wage increase and enclosing a $10 bill in order to dissuade them from activities on behalf of U, violative)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(E's preelection promise to grant pay raises or implying that they possibly would be given after election, unlawful, where E's conduct tended to impress upon Ees that they did not need U to receive pay raise, and statement that wages, which might be granted later on, could not be considered while election was pending, had foreseeable effect of placing onus for such delay on U)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(promise and grant of wage increases, not unlawful in view of E's practice of annual wage increases and no independent evidence to establish unlawful motivation therefor)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(no unlawful promise of benefit where E asked Ee who had informed E she would look for new job if she wasn't granted needed wage increase to not leave w/o giving E opportunity to make offer, and where E subsequently informed Ee requested raise was too high and did not make counter offer)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(E informing Ee on advice of counsel he could not give Ee wage increase in view of U activity, not unlawful, since recission was correction of error in offering unlawful increase)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

Goodyear Aerospace Corporation v. N.L.R.B. **623 F.2d 476 (C.A. 6, 1980)**
(announcement of wage increase to discourage U activity, unlawful)

5042-6785 Loans

Lika Corporation **JD-(SF)-69-80**

5042-6787 Paid holiday

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

5042-6788 Vacations

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

Alumbaugh Coal Corporation **247 NLRB No. 112**

5042-6792 Resolution of employee friction with supervisor

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ees at group meeting whether he had cleared up problems they had been having with supervisors constituted unlawful interrogation and adjustment of grievances)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's inquiry as to how U adherent was currently getting along with supervisor, unlawful, since it was attempt to adjust long standing grievance hard on U's demand for recognition)

5042-6795 Plant improvements

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(announcement of proposed new parking lot made during U campaign, unlawful, where E failed to establish legitimate business reason for announcement and, although new parking lot had been finally decided upon, nothing was done until parking lot problem was brought to E's attention in unlawful grievance solicitation meetings)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(promise of additional and improved parking facilities, unlawful where made solely to persuade employees to abandon U and to vote against U in upcoming election)

5042-6797 Offering employee sale of stock or other interest in business

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**

5042-6797—Cont.

(promising Ee an interest in E's business if Ee abandoned his support for U, unlawful)

5042-6798 Redress of grievances

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee what Ee's grievances were and suggesting that Ee take these grievances to higher management, unlawful solicitation of grievances with view towards adjustment)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ees at group meeting whether he had cleared up problems they had been having with supervisors constituted unlawful interrogation and adjustment of grievances)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's inquiry as to how U adherent was currently getting along with supervisor, unlawful, since it was attempt to adjust long standing grievance hard on U's demand for recognition)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(promise of economic benefits and resolution of Ees' complaints to encourage Ees to refrain or withdraw their support from Us, violative)

Certain-Teed Insulation Company **251 NLRB No. 208**
(violation where there was implied promises to remedy grievances solicited during management consultant interviews with individual Ees)

United States Steel Corporation **250 NLRB No. 059**
(E agreeing to post job only on condition that grievance protesting failure to post job be withdrawn, unlawful; particularly where job was subsequently posted w/o withdrawing of grievance after firing of grievance committeeman)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(violation where E interrogated Ees and remedied identified grievances)

Houston County Electric Cooperative, Inc. **247 NLRB No. 087**
(asking Ee during U campaign *what the problems were*, unlawful, absent any previous policy of periodically soliciting grievances; *such activity ... occuring in midst of U campaign inherently constitutes implied promise to remedy grievances and violates Section 8(a)(1)*)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(ct could not disregard finding of Bd that creation of telephone hot line was intended and understood to be solicitation of grievances and implied promise that those grievances would be remedied and was unlawful)

5042-6799 Other promises

Alfa Leisure, Inc. **251 NLRB No. 088**
(promising Ee letter guaranteeing job for Ee's brother in order for brother to be eligible for parole if Ee withdrew charges pending before Bd, violative)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(telling Ees prior to decertification election that if there was no U E could be more lenient with apprentices who failed test, rather than having to comply with procedures dictated by U)

Peavey Company **249 NLRB No. 110**
(E changing policy on day after it learned of organizing campaign to allow Ees to see their personnel files, unlawful)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where Ee had accumulated enough points for lateness warning under E's disciplinary system and supervisor offered to try to help Ee out she violated Act where offer of benefit was based on Ee's professed opposition to U)

5042-8500 Offer of money

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(E's sending Ees letter advising them of wage increase and enclosing a $10 bill in order to dissuade them from activities on behalf of U, violative)

5045 EMPLOYER-SPONSORED MEETINGS WITH EMPLOYEES

Great Dane Trailers Indiana, Inc. **252 NLRB No. 015**
(E may exclude known U adherents from Ee meetings held to present E's opposition to U, notwithstanding has committed other 8(a)(1) violation and gives no explanation to Ees as to reason for their exclusion)

The Krebs School Foundation, Inc. **251 NLRB No. 187**
(E's solicitation of Ee views in meetings with Ees re terms and conditions of employment by E's personnel subcommittee, unlawful where E established subcommittee and met with Ees to counter U's organizational campaign and to wean Ees away from U by resolving some of their grievances)

St. Francis Hospital **249 NLRB No. 017**
(holding meetings so that Ees could air their grievances during U campaign and holding election to select representative to meet with management)

Werth Engineering, Inc. **JD-295-80**

5048 EMPLOYER-SPONSORED POLLS, ELECTIONS, ETC.

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(polling Ees as to how they were going to vote and revealing results in way Ees could reasonably be expected to hear them, unlawful)

5048-0100 Generally

5048-0160 Safeguards for polls to ascertain majority in respect to request to recognize

5048-0160-0100 Generally

English Brothers Pattern and Foundry **253 NLRB No. 067**
(E which polled Ees w/o observing *Struksnes* guidelines violated Act)

5048-0160-1800 Purpose to solicit grievances about working conditions

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(E's alleged confidential survey of its Ees conducted during U campaign which survey contained several open-ended questions concerning Ees' attitudes to which responses could and did reveal U sentiments of Ees as well as requiring Ees to write in their age, sex, department and length of service with E held violative where survey generated responses from Ees regarding their U sentiments, lacked necessary confidentiality and assurances against reprisal and was conducted in context of other ULPs)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(E's survey, conducted during U campaign, of Ee attitude towards their working conditions held violative since intent of survey was to elicit and repair Ee grievances; E had never previously conducted such survey nor had it established any systematic procedure for receiving and analyzing Ee complaints; effect of survey was to impliedly promise to rectify Ee grievances and erode Ee support for U)

5048-0160-3300 Purpose communicated to employees

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

The Workshop, Inc. **JD-230-80**
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

5048-0160-5000 Assurances against reprisal given

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

The Workshop, Inc. **JD-230-80**
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

5048-0160-6700 Poll by secret ballot

The Workshop, Inc. **JD-230-80**
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

5048-0180 Unlawful in light of other circumstances

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(E's alleged confidential survey of its Ees conducted during U campaign which survey contained several open-ended questions concerning Ees' attitudes to which responses could and did reveal U sentiments of Ees as well as requiring Ees to write in their age, sex, department and length of service with E held violative where survey generated responses from Ees regarding their U sentiments, lacked necessary confidentiality and assurances against reprisal and was conducted in context of other ULPs)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(questioning of Ees about U activities and their desires for representation by highest ranking member of management, with no valid purpose communicated to Ees, prefaced by expressions of hostility to U accompanied by other violative conduct violates Act)

5048-3300 Method employed

5048-3360 Polling or surveying employees

English Brothers Pattern and Foundry **253 NLRB No. 067**
(E which polled Ees w/o observing *Struksnes* guidelines violated Act)

Ben Franklin Division of City Products Corporation **251 NLRB No. 200**
(conducting written opinion survey among *all* Ees during course of U campaign, violative, since survey undertaken to erode Ee support for U,

5048-3360—Cont.

notwithstanding E had practice of orally polling *ramdom* sample of Ees at its new operations, where these Ees never surveyed before, and, after survey completed, several Ee complaints were remedied)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(coercively polling Ees concerning their U sympathies and activities, unlawful)

5048-5000 Objective basis for doubting union's majority

The Workshop, Inc. **JD-230-80**
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

5048-6700 Responsbility of employer shown by

5048-6780 Timing of employer canvass

5048-6780-1300 During organization campaign

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(E's survey, conducted during U campaign, of Ee attitude towards their working conditions held violative since intent of survey was to elicit and repair Ee grievances; E had never previously conducted such survey nor had it established any systematic procedure for receiving and analyzing Ee complaints; effect of survey was to impliedly promise to rectify Ee grievances and erode Ee support for U)

5048-6780-2500 After bargaining request received

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(E's alleged confidential survey of its Ees conducted during U campaign which survey contained several open-ended questions concerning Ees' attitudes to which responses could and did reveal U sentiments of Ees as well as requiring Ees to write in their age, sex, department and length of service with E held violative where survey generated responses from Ees regarding their U sentiments, lacked necessary confidentiality and assurances against reprisal and was conducted in context of other ULPs)

5051 ACTIONS BASED UPON RACIAL OR OTHER MINORITY GROUP CONSIDERATIONS

5051-6700 Forms of actions

Douglas & Lomason Company **253 NLRB No. 039**
(informing Ees that majority of U's membership is Black, thus appealing to Ees' prejudices or fears in order to undermine U, unlawful)

5051-6733 Promotion

Honeywell, Inc. **250 NLRB No. 019**
(suspension of Ee who wrote statements on E's wall accusing supervisors of racial discrimination, unlawful, where discipline for public airing of his greivance concerning discrimination rather than pursuant to rule against defacing property)

5054 AVOIDANCE OR ABANDONMENT OF RESORT TO ACT URGED OR REQUIRED BY EMPLOYER

5054-0600 Conditioning benefits or discipline on employees not appealing to government agencies

Universal Service Contractors **247 NLRB No. 097**
(asking Ee to withdraw his compensation claims against it which had been filed with State not violative, where E had properly paid Ee, there was no evidence of discrimination against Ee and E explained to Ee that all Ees in his situation were paid same wage)

5054-6300 Conditioning continued employment on refraining from engaging in union activities

Comgeneral Corporation **251 NLRB No. 069**

Peat Manufacturing Company **251 NLRB No. 153**
(telling economic strikers that *they were not going to get their jobs back*, violative, since they were entitled their jobs once strike had ended, they applied for reinstatement and openings for which they were qualified became available)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(supervisor threatening Ees with discharge if they did not keep out of U, or if they did not bring to her U material received in mail, unlawful)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services **JD-(SF)-225-80**
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

5054-6500 Conditioning employment on promise not to engage in protected activities

J. J. Security, Inc. **252 NLRB No. 180**
(Bd affirmed ALJ's finding a violation since letters sent to constructive dischargees were not valid offers of reinstatement because conditioned on Ees foregoing their Sec. 7 rights where contrary to E's contention, interpretation by ALJ of phrase in letters *consistent with our discussion of August 17* regarding Ees abandoning wage demand, was reasonable under the circumstances, and where E drafted letter containing questionalbe phrase and was liable to various interpretations including one which deemed it to be invalid offer containing illegal condition)

J. J. Security, Inc. **252 NLRB No. 180**
(letters sent to constructively discharged Ees stating that they could return to work if they gave up their demands for improved working conditions violative)

T.V. Dispatch, Inc. **JD-143-80**
(requiring Ees to apologize for having participated in grievance meeting in order to retain their jobs)

5054-7500 Conditioning employment on withdrawal of charges

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president's offer to U adherent at time of her discharge that he would permit her to return to work if she would abandon her support for U effort and refrain from filing ULP charge, violative)

5060 AVOIDANCE OR REPUDIATION OF UNION URGED OR REQUIRED BY EMPLOYER

5060-0800 Inducing abandonment of strike

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

The Royal General Company **JD-17-80**
(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

5060-2500 Assistance in effecting resignation

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequently encouraging and assisting Ees to withdraw from Teamsters local, violative)

5060-3300 Inducing abandonment of union by granting benefits or making concessions

Stanley M. Feil, Inc. **250 NLRB No. 065**
(insituting hospitalization insurance, unlawful, since for purpose of interferring with U activity where Ees were still wearing U buttons and E referred to fact U campaign was *apparently* over and not to assertion that campaign *was* over)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(E's suggestion that U ptn be withdrawn in exchange for his agreeing to consider Ees demands violative)

Highland Foods, Inc. and Vickelda Industrial Corporation **JD-364-80**
(E's agreement to proposal for election of a grievance committee violative, where E was impelled be desire to induce Ees to forsake U in exchange for improved working conditions)

5060-3350 Offer of concessions

Maywood, Inc. **251 NLRB No. 139**
(supervisor's telling Ee that onerous assignment imposed upon her was result of her U activity and that she might be relieved of the assignment if she revoked her U card and ceased associating with U advocates, violative)

Maywood, Inc. **251 NLRB No. 139**
(where E had induced Ee to revoke her authorization card, supervisors' summoning Ee to office for purpose of assisting another Ee to revoke her U card, violative, as, in context, supervisor conveyed impression of further inducement and approval of revocation)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(offering Ees benefits if they negotiate directly with E and withdraw support from U violative)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(E's leaflet and speech campaign drove home message of better future benefits in exchange for U's defeat and were unlawful implied promises of benefits)

5060-4100 Benefits conditioned on abandonment of union

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**

(supervisor telling Ee if he *wanted to keep working to stick with* E, unlawful since it amounted to both threat of discharge for supporting U and promise of benefit for opposing U)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**

(offering Ee promotion to dissuade Ees from organizing U, unlawful)

Amber Delivery Service, Inc. **250 NLRB No. 016**

(E's suggestion that U ptn be withdrawn in exchange for his agreeing to consider Ees demands violative)

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Cable Vision, Inc. **249 NLRB No. 062**

(conditioning benefits on abandonment of U, unlawful)

Lyman Steel Company **249 NLRB No. 040**

(promising Ees wage increase if they withheld their support from Us, held violative)

St. Francis Hospital **249 NLRB No. 017**

(working conditions would improve if U lost election)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

(promising Ee extra hours of work if he signed anti-U ptn, unlawful)

Keister Coal Company, Inc. **247 NLRB No. 049**

(E's granting inordinately large wage increase in face of U organizing activity held violative when compared to wage increases granted prior to advent of U)

Keister Coal Company, Inc. **247 NLRB No. 049**

(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

Keister Coal Company, Inc. **247 NLRB No. 049**

(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

The Royal General Company **JD-17-80**

(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

5060-5000 Reemployment conditioned on abandonment of union

Rich's Precision Foundry, Inc. **250 NLRB No. 173**

(solicitation of unlawfully discharged Ee to ask for his job back and tell other Ees that U was no good held unlawful solicitation to engage in antiU activity and conditioning of reemployment on acceptance of unlawful request)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(E's president's offer to U adherent at time of her discharge that he would permit her to return to work if she would abandon her support for U effort and refrain from filing ULP charge, violative)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

5060-5200 Employment conditioned on applicant's lack of union sentiments

Stafford Construction Co. **250 NLRB No. 128**

(telling prospective Ees that employment was conditioned on withdrawal from U)

5060-6300 Direct solicitation of grievances

Riley-Beaird, Inc. **253 NLRB No. 085**

(E unlawfully solicited and remedied Ee's grievance where, after seeing Ee pass out U literature, E asked Ee what was wrong, stated that he would try to solve Ee's problems, and thereafter remedied Ee's complaint about loss of overtime)

Berger Transfer and Storage, Inc. **253 NLRB No. 002**

(E's request to Ee that he set up meeting of company officials and strike leaders constitutes solicitation of grievances and violates Act)

Allen-Stone Boxes, Inc. **252 NLRB No. 171**

(soliciting Ee grievances in manner and under circumstances implying that Ees did not need U, violative)

Omark-RCBS, A Division of Omark Industries **252 NLRB No. 089**

(E's statements requesting Ees to deal directly with management, asking for complaints or gripes and requesting opportunity to resolve problems, held violative since they constituted clear attempt to dissuade Ees from supporting U by soliciting grievances and holding out possbility of more favorable treatment)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

(E's survey, conducted during U campaign, of Ee attitude towards their working conditions held violative since intent of survey was to elicit and repair Ee grievances; E had never previously conducted such survey nor had it established any systematic procedure for receiving and analyzing Ee complaints; effect of survey was to impliedly promise to rectify Ee grievances and erode Ee support for U)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**

(where supervisor asked Ee why he was supporting U instead of e and Ee replied that it was because he wanted to work day rather than rotating shift, supervisor's telling Ee *that he would go upstairs and see what he could find out and do about it,* violative)

The Krebs School Foundation, Inc. **251 NLRB No. 187**

(E's solicitation of Ee views in meetings with Ees re terms and conditions of employment by E's personnel subcommittee, unlawful where E established subcommittee and met with Ees to counter U's organizational campaign and to wean Ees away from U by resolving some of their grievances)

Chester Valley, Inc. **251 NLRB No. 190**

(speech to Ees in which E stated that he would rather deal with Ees than with U and that, if that were done, something could have been worked out, that he had *open door* policy, and that whatever Ees could get through U they could get from him, unlawful, since E thereby solicited grievances and promised to remedy them)

Certain-Teed Insulation Company **251 NLRB No. 208**

(violation where psychologist from E's management consulting firm interviewed Ees about their *perceptions* about E and to *find out what was wrong*)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**

(violation where E solicited Ee grievances in order to dissuade Ees from supporting U)

Burgess Mining & Construction Corp. **250 NLRB No. 033**

(supervisor suggesting to Ee that Ee could better resolve problem by talking to E's chairman of the board alone and w/o presence of his U representative, unlawful, since suggestion discourages resort to collective bargaining process and interferes with right to be represented)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(violation and interference where before election E directly solicited grievancesto solve the *problem* and issued questionnaire to Ees about supervision andE's policy and, while objections were pending, service director suggested and encouraged and supervisor renewed and offered to help effectuate Ees' election of representatives to present their grievances to E)

Steiner-Liff Textile Products Company **249 NLRB No. 152**

(solicitating grievances at Ee meetings and promising to correct them, violative)

Patsy Bee, Inc. **249 NLRB No. 125**

Kantor Pepsi-Cola Bottling Co. of Beloit, Wisconsin **248 NLRB No. 012**

(solicitation of grievances from Ee and promise of benefits, unlawful, notwithstanding E's asserted reasons for promising benefits; Bd found that E's unexpressed thoughts or belief that *good things* might be in the offing because of potential merger with another E had no bearing on issue of whether his expressed statements had tendency to interfere)

CTS Keene, Inc. **247 NLRB No. 141**

(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

Alumbaugh Coal Corporation **247 NLRB No. 112**

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**

(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**

(supervisor meeting with Ees as group and explaining why E could not afford dental insurance and discussing E's improved health benefits, unlawful, where meeting was merely extension of unlawful survey E conducted earlier to solicit grievances and undermine U)

5060-6300—Cont.

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**

WWHT, Wometco Blonder Tongue Broadcasting Corporation **JD-(NY)-63-80**

(soliciting Ees' grievances at Ee meeting violative, where purpose was to interfere with U's organizational plans)

Liberty Vinyl Corporation **JD-(SF)-268-80**

(soliciting grievances at meetings during U campaign with labor relations consultant and interpretor not violative, where consultant gave general disclsimer that he had no power to correct grievances but would pass them to management and E, who had held previous meetings where Ees were invited to discuss problems and make recommendations, did not deviate from past practices)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**

(plant manager's solicitation of grievances and his promises to resolve them, unlawful where they were attempt to persuade Ees to abandon U)

Interplastic Corporation **JD-74-80**

Union Carbide Corporation **JD-(SF)-13-80**

5060-6900 Solicitation of expression of opposition to union

Pandair Freight, Inc. **253 NLRB No. 134**

(E's solicitation from Ee of written expression of abondonment of U adherence as well as promise that Ee will encourage other Ees to refrain from U support, unlawful)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**

(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

Union Carbide Corporation **JD-(SF)-13-80**

(E's urging two Ees to talk to *the other guys* about the U situation, unlawful)

5060-7500 Solicitation of repudiation of union

Behring International, Inc. **252 NLRB No. 055**

(E, through Ees acting as its agents, unlawfully solicited Ees to sign document requesting withdrawal of U ptn)

Weyerhaeuser Company **251 NLRB No. 097**

(soliciting Ee who was considered leader of minority Ees to talk *his people* out of supporting U, violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**

(soliciting Ee not to be U adherent because of E's past and perhaps future generous leave policy)

The Davis Company **249 NLRB No. 068**

(supervisors' contacting individually those Ees thought most susceptible to pressure and advising them of their right to revoke dues-checkoff authorizations held, in context of other ULPs designed to discourage U support, not merely advising Ees of their rights but was unlawfully soliciting them to withdraw from U and revoke checkoff authorizations)

Cable Vision, Inc. **249 NLRB No. 062**

(solicitation of Ee to abandon U, unlawful)

Lyman Steel Company **249 NLRB No. 040**

(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**

(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Lyman Steel Company **249 NLRB No. 040**

(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(solicitation of Ees' signatures on ptn repudiating U, unlawful; E's Ees who signed ptn did so in presence of notary public who witnessed their signatures)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(supervisor's stating to U supporter that he did not want any part of U and wished he could change Ee's mind, and that he expected Ee to do his job and expected no trouble from him, not unlawful)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**

(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequently encouraging and assisting Ees to withdraw from Teamsters local, violative)

5060-7550 Decertification petition

Times-Herald, Inc. **253 NLRB No. 066**

(no violation when, in response to question asked by supervisory member of unit, E told him there was way Ees could end strike and referred him to Regional Office of Bd from which he thereafter received decertification ptn which he filed; there was no evidence that any Ee reasonably believed supervisor was acting on behalf of management, and GC failed to present any evidence relating to circumstances in which the solicitations for decertification of U were made)

Ledford Construction Company, Inc. **251 NLRB No. 193**

(circulating decertification ptn in presence of E's president gave rise to inference that E supported ptn)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**

(soliciting Ee to initiate decertification ptn, unlawful)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

(violation where E suggested to member of U negotiating committee that the Ees wait and file decertification ptn and then form their own Ee committee to bargain with E)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

(E who had engaged in decertification campaign held not entitled to benefit of rule that filing of decertification may be by itself, a valid excuse for not bargaining with incumbent representative (provided that U's loss of majority status is not attributable to E's ULPs) but must also show some objective evidence of loss of majority status)

5060-8700 Solicitation of revocation of dues checkoff authorizations

The Davis Company **249 NLRB No. 068**

(supervisors' contacting individually those Ees thought most susceptible to pressure and advising them of their right to revoke dues-checkoff authorizations held, in context of other ULPs designed to discourage U support, not merely advising Ees of their rights but was unlawfully soliciting them to withdraw from U and revoke checkoff authorizations)

5060-8900 Solicitation of employee grievance or bargaining committee

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

Weyerhaeuser Company **251 NLRB No. 097**

(remarks calculated to encourage formation or use of Ees committee to deal with Ee problems as alternative to U, violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

(violation where E suggested to member of U negotiating committee that the Ees wait and file decertification ptn and then form their own Ee committee to bargain with E)

Highland Foods, Inc. and Vickelda Industrial Corporation **JD-364-80**

(E's agreement to proposal for election of a grievance committee violative, where E was impelled be desire to induce Ees to forsake U in exchange for improved working conditions)

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1980)**

(suggestion to Ee to form in-house committee, violative, where made in effort to undermine U's organizational campaign)

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1979)**

(suggestion to Ee to form in-house committee, violative, where made in effort to undermine U's organizational campaign)

5060-9100 Solicitation of withdrawal of union designation cards

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**

(violation where E repeatedly distributed withdrawal information to Ees in manner which allowed supervisor to observe which Ees elected to pick up the distributions)

Magnesium Casting Company, Inc. **250 NLRB No. 107**

(statement to Ee not to sign paper for U and that E was going to get a lawyer to take papers back, unlawful, since Ee was thereby coerced not to sign U card with threat of legal action if he did)

Alumbaugh Coal Corporation **247 NLRB No. 112**

Tartan Marine Company **247 NLRB No. 073**

(E's posting notice informing Ees they *had an absolute and moral right to cancel their U cards and have them returned* and that if they desired to get

5060-9100—Cont.

their cards back, they should write letter to U with a copy to Bd asking that their cards be cancelled and returned to them and providing Us and Bd's addresses, not unlawful, where Ees had requested information; however, supervisor calling Ee's attention to notice, after Ee expressd desire to attend company meetings, violative)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

5062 REFUSAL TO RECOGNIZE AND/OR BARGAIN

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter ego's refusal to bargain with certified U violative)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(E engaging through its representatives in dilatory and surface bargaining, utilizing neogitators who did not have authority to consummate agreement w/o approval of E's president, and E's president failure to agree to terms and conditions negotiated by E's representative with U, violative)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(E's sale of 2 of its 30 trucks 3 months after strike which had no effect on Ee's job did not violate Act)

5066 GOING OVER HEADS OF REPRESENTATIVES

5066-1400 Changes in terms of employment made unilaterally or by negotiations with co-union

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

5066-1460 Unilateral withdrawal of concessions

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

5066-1480 Wage increases

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

5066-5600 Direct appeal to strikers

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(no violation where in reply to Ee's question as to *how long strike would last* E replied Ees *could come back to work anytime* and he *had police protection for strikers*)

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

5066-6300 Denying plant access to union

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(denial of access by U representatives to E's premises as provided in agreement unlawful)

5066-7000 Undermining authority of representatives

5066-7025 Bargaining directly with employees

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(offering Ees benefits if they negotiate directly with E and withdraw support from U violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(statement to Ees that if Ees did not agree to pay increase in insurance he would close plant, violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E bypassing Ee committee and presenting contract proposals directly to Ees and asking Ees to accept or reject proposals and upon rejection presenting second proposal directly to Ees)

5066-7037 Solicitation and inducement of employees to accept offer

Top Manufacturing Company, Inc. **249 NLRB No. 055**
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

5066-7050 Offering employees better terms than offered to union

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct enforced Bd order finding that E had unlawfully interfered with Ees' rights to engage in protected strike by telling non-U Ee of E that striking Ees had been offered better insurance, wages, and retirement benefits if they would get out of U)

5066-7075 Interference with grievance settlement

Top Manufacturing Company, Inc. **249 NLRB No. 055**
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

5072 INTERFERENCE WITH UNION OR COLLECTIVE ACTIVITIES

5072-0200 Interference with access to union

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(prohibiting Ees from entering into work room of U activist held violative)

Tri-State Carpenters & Joiners District Council **250 NLRB No. 125**
(reprimanding and threatening Ee with discipline for seeking advice of and consulting with U representative violative)

Standard Bridge Corporation **JD-174-80**
(ordering Ees to secret themselves from U's business representative at E's jobsite to prevent Ees' attempts to become U members or to engage in U activities which did not interfere with their job duties, unlawful)

5072-0400 Ordering union representative out of plant or off jobsite

Villa Avila **253 NLRB No. 010**
(E-who evicted U representatives from job site, threatened them with arrest, blocked egress from site violated Act where U representatives were performing legitimate duties on job site)

Giant Food, Inc. **252 NLRB No. 182**
(instructing Ees to eject U representatives from stores by force violative as demonstration of extreme measures E will employ to defeat U and E's power over Ees employment)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

5072-0600 Supervisor solicitation of signatures on antiunion petition

Douglas & Lomason Company **253 NLRB No. 039**
(although it was not certain that it was supervisor who posted anti-U petition, there was sufficient circumstantial evidence to make that likely; his failure to rebut that necessary inference was persuasive to find violation)

5072-0700 Destruction of signed authorization cards

WWHT, Wometco Blonder Tongue Broadcasting Corporation **JD-(NY)-63-80**
(destruction of signed authorization cards by supervisor who was repository for cards not violative where 90% of Ees indicated they wanted supervisor to destroy cards because they were disenchanted with U; act of destroying cards was not to benefit E but to protect the card signers)

5072-1200 Requesting wage increases

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

5072-1300 Refusing to hire applicants because of prior union adherence or activity

Civic Center Cleaning Co., Inc. **252 NLRB No. 110**
(violation where E stated to Ee that Ees who were troublemakers and who had filed ULP charges with Bd would not be hired)

Ashtabula Forge, A Division of ABS Industries, Inc. **JD-388-80**
(industrial relations manager informing Ee that he would not have been hired if E had known he was son of U president, unlawful)

Monongahela Steel Corporation **JD-392-80**
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

5072-1500 Solicitation of opposition to union

Western Truck Services, Inc. **252 NLRB No. 096**
(sponsoring and circulating petition to undermine U's representative status, violative)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(soliciting Ees to influence other drivers to support E rather than U)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president informing Ee she did not have to sign U card if she did not want, unlawful)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(telling Ees not to attend U meetings, encourage U representation, or sign U cards, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

Tartan Marine Company **247 NLRB No. 073**
(supervisor requesting that Ee inform other Ees about bad points of unionization especially seniority policy which E alleged could adversely effect Ees)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

Galax Apparel Corporation **247 NLRB No. 026**
(directing Ees to discourage other Ees from supporting U, violative)

Mather Federal Credit Union **JD-(SF)-8-80**

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(E's suggestion that Ee would be better off by not joining U constitutes interference with Ee's freedom of choice for or against unionization and is unlawful)

5072-1600 Solicitation of revocation of authorization cards

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

5072-1700 Solicitation of revocation of dues checkoff authorizations

The Davis Company **249 NLRB No. 068**
(under circumstances herein, assistance to Ees in withdrawing their dues checkoff authorizations, unlawful)

5072-1900 Use of polygraph test

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

5072-2000 Prohibiting employees' discussion about wages

Koch Supplies, Inc. **249 NLRB No. 160**
(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and was thus not aimed at solving personal problem but included welfare of others)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(rule prohibiting Ees from discussing E's wage schedule with outsiders, unlawful; E's contention public knowledge of wage rates would assist competitors, rejected, where E in mounting its annual wage survey gave out its own data to competitors)

5072-2300 Interference with employees' right to bargain through representatives of their own choosing

Classic Truck Rental Corp. **251 NLRB No. 056**
(solicitation by Ee asking Ees to sign ptn to get rid of incumbent shop steward and elect new steward, not unlawful, even though Ee solicited Ees in office in which E was present, since there was no evidence that E was aware of what was going on, E's implication in attempt to get rid of steward would not be assumed merely because E was present, E otherwise did not indicate involvement, and there was no evidence Ee was acting as E agent)

5072-2400 Interference with employee's right to representation during meetings with employer

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(in *Weingarten* SCt endorsed Bd's view that *Ee* must request representation)

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(denial of Ee's request for presence of U steward at disciplinary interview with maintenance superintendent not violative where Ee's call to U steward prior to interview was not effective invocation of Ee's *Weingarten* rights, since maintenance superintendent was not *privy* to call to U steward; therefore, request not directed to official who is in position to grant or deny request)

Stewart-Warner Corporation **253 NLRB No. 016**
(*Weingarten* rights do not attach to meeting between supervisor and Ee intended to clarify Ee's duties or to set forth plant safety rules with no disciplinary overtones)

Penn-Dixie Steel Corporation, Joliet Bar Mill Division **253 NLRB No. 012**
(requiring Ee to participate in interview conducted by detective agency to determine use of drugs in plant held violative, where Ee's request for U representation during interview were not granted and Ee signed confession of misconduct and resignation)

Kahn's and Company, Division of Consolicdated Food Co. **253 NLRB No. 004**
(denial of Ee's request for U Representative during investigative interview in which he was discharged, violative; discharge itself is not independent violation of 8(a)(1) where it is unrelated to exercise of *Weingarten* rights)

United States Postal Service **252 NLRB No. 014**
(E's refusal to allow, upon Ee's request, Ee's U representative to accompany Ee during *fitness for duty* examination, not unlawful since examinations were not part of disciplinary procedure and not w/i purview of *Weingarten* where, although examinations were prompted by problems with personnel and might result in recommendations as to Ees' future work assignments, they were not meant to form basis for disciplinary action and did not include investigatory questions or envision E-Ee confrontation)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(denying Ee's request for representation at meeting which he reasonably believed would result, and which resulted, in disciplinary action against him, not violative where, unlike E in *Baton Rouge Water Works Company*, E herein did not reach final, binding decision concerning specific discipline prior to meeting with Ee, nor did it merely inform Ee of any decision; in fact, E changed originally announced discipline from discharge to written reprimand upon investigating the matter further and asking Ee questions about his alleged misconduct)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(violation, where Ee reasonably anticipated his meeting with E to result, in disciplinary action against him, E held the meeting with Ee w/o granting Ee's request for representation, and E actually imposed discipline at such meeting)

General Motors Corporation **251 NLRB No. 121**
(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **251 NLRB No. 122**
(no violation of Ee's right to have representative at interviews with E concerning Ee's suspension and then discharge for excessive tardiness where purpose of interviews was to announce and implement previously determined disciplinary action; E had decided respectively to suspend and to discharge Ee before meetings, on basis of facts which it had obtained w/o talking to Ee; see *Baton Rouge Water Works* 246 NLRB No. 161 (1979))

Roadway Express, Inc. **251 NLRB No. 138**
(supervisor's refusing Ee's request for U representation during interview regarding Ee's suspension for violating E's rule concerning coffee breaks while driving truck held violative, since interview was disciplinary rather than investigative; disciplinary action had to be taken if violation of E's rule had in fact occurred)

Amoco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

Kraft Foods, Inc. **251 NLRB No. 006**

5072-2400—Cont.

(effectively depriving Ee, who was involved in forklift accident and fight with another Ee, of his right to U representation at investigatory interview which Ee reasonably believed might result in disciplinary action unless U representative was present, violative)

Texaco, Inc. **251 NLRB No. 063**

(E who instructed U representative that he must remain silent during interview of Ee relating to his possible misconduct on job violated Act as *Weingarten* right to representation includes not only presence of representative but also active assistance where confrontation threatens Ee's job security)

Texaco, Inc. **251 NLRB No. 063**

(E who required U representative to remain silent during meeting with Ee held solely for purpose of informing him of 3-day suspension did not violate Act as E is not statutorily obligated to furnish representation at such interview and thus fact that representative was required to remain silent irrelevant)

Southwestern Bell Telephone Company **251 NLRB No. 061**

(E who insisted that U steward remain silent during investigatory interview violated Act as mere presence of steward while Ee was being interrogated about alleged theft of company property is insufficient to alter inbalance which SCt sought to allevaiate in its *Weingarten* decision)

Southwestern Bell Telephone Company **251 NLRB No. 061**

(denying Ee presence of U steward at meeting between E and Ee not violative where sole purpose of meeting was to inform Ee of her discharge as *Weingarten* does not apply to meetings held for such purposes)

Illinois Bell Telephone Company **251 NLRB No. 128**

(Ee entitled to have any Ee present with her at disciplinary meeting with E and E's refusal to allow anyone but Ee with official U status be present, violative)

Southern Bell Telephone and Telegraph **251 NLRB No. 159**

(refusal of Ee's request for U representative to be present at investigatory meeting made when Ee became aware that meeting might *result in disciplinary action* against her, and imposition of discipline for conduct which was subject of interview, violative)

Coyne Cylinder Company **251 NLRB No. 198**

(E's interview or Ee violated Ee's *Weingarten* rights where, prior to interview, no final decision had been made whether to discharge Ee for smoking marijuana during his lunch breaks and E denied Ee's request made during interview to have U representative present during remainder of interview)

Coyne Cylinder Company **251 NLRB No. 198**

(*Weingarten* rights do not extend to allowing Ee to produce witnesses on his behalf)

Coyne Cylinder Company **251 NLRB No. 198**

(where other Ees were discharged for same offense charging party accused of, he had reasonable basis to believe discipline was in offing when called for interview)

Ohio Masonic Home **251 NLRB No. 059**

(upper echelon supervisor's interview with Ee after denying her request that fellow Ee attend interview, unlawful, where interview was not simply to inform Ee of, or to impose, previously determined discipline, and, at time of interview, supervisor's authorization to suspend Ee was not tantamount to final, binding decision to do so since supervisor could have decided not to impose suspension; during interview supervisor interrogated Ee regarding complaints received from Ee's supervisor, and Ee was informed of suspension only after she had explained circumstances surrounding complaints)

Ohio Masonic Home **251 NLRB No. 059**

(where GC shows that E conducted unlawful interview with Ee who was subsequently discipllined for conduct which was subject of interview, burden of going forward with evidence shifts to E to show that decision to discipline Ee was not based upon information obtained at interview)

Southwestern Bell Telephone Company **251 NLRB No. 062**

(no violation where, during investigatory interview of Ee, E did not, as claimed by Ee, instruct Ee's U representative to remain silent and simply take notes; instead, U representative participated in meeting and inquired into matters under discussion)

Southwestern Bell Telephone Company **251 NLRB No. 062**

(Bd disavowed ALJ's gratuitous comments regarding right of E to limit participation of U representative at an investigatory interview of Ee)

Southwestern Bell Telephone Company **251 NLRB No. 062**

(E's conducting interviews with Ees who, although advised by E to obtain U representation had fellow Ees serve as their representative, not unlawful, where sole purpose of meetings was to inform Ees of, and to act upon, previously made disciplinary decision, since Ee does not have Sec. 7 right to U representation at meeting with E held for such purpose)

Southwestern Bell Telephone Company **251 NLRB No. 062**

(no violation, where, at meeting with E, Ee was advised that E believed a prior incident involving Ee bordered on insubordination and that E wanted to ascertain reason for Ee's attitude toward him; Ee acknowledged that she was repeatedly assured that no disciplinary action against her was contemplated and that she therefore was not entitled to U representation; consequently, it was unreasonable for Ee to fear disciplinary action in face of repeated assurances to the contrary, and there was no reason for Ee to disbelieve such representations)

Prudential Insurance Company of America **251 NLRB No. 213**

(where E conducted investigatory interview with *disciplinary* overtones and denied Ee's request for U representative to be present and failed to offer Ee options of continuing interview w/o U representative or discontinuing interview, it violated Act; no management right to secure information from Ee absent requested U representative during investigatory interview with disciplinary overtones)

United Telephone Company of Florida **251 NLRB No. 101**

(suspension of Ee for refusing to further participate in interview, not violative, since Ee had no reasonable grounds for believing interview would result in disciplinary action where interview was pursuant to counseling procedures, the non-disciplinary nature of which Ee was aware, and Ee did not request U representation at outset of interview)

United Telephone Company of Florida **251 NLRB No. 101**

(*test for determining whether Ee reasonably believes interview might reasonably result in disciplinary action is measured by objective standards under all circumstances of the case rather than by Ees subjective motivations)*

United States Postal Service **251 NLRB No. 033**

(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

Hotel St. Moritz, Inc. **251 NLRB No. 015**

(no violation by E's questioning delegate status of former elected U delegate who appeared at E's meeting with another Ee at latter's request, since E's questioning was not in bad faith where the testimony of many witnesses showed considerable confusion as to whether former delegate retained his status)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(denial of U representation in meetings with E, when requested by Ee, unlawful, where E, by seeking additional information bearing on Ee's conduct, went beyond act of imposing discipline and, instead, was continuing on substantive basis, its investigation of Ee's overall conduct and, under such circumstances, Ee was entitled to representation)

Burgess Mining & Construction Corp. **250 NLRB No. 033**

(supervisor suggesting to Ee that Ee could better resolve problem by talking to E's chairman of the board alone and w/o presence of his U representative, unlawful, since suggestion discourages resort to collective bargaining process and interferes with right to be represented)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**

(requiring Ee to participate in Ee interview w/o representation, violative where Ee, who reasonably anticipated disciplinary action, had asked that another Ee be permitted to attend the meeting with her to act as witness)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**

(threatening Ee with charge of insubordination if she refused to participate in Ee interview w/o another Ee being present as witness, violative)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**

(right to representation even though only fellow Ee and even though U not yet certified or certification being challenged)

Sentry Investigation Corp. **249 NLRB No. 130**

(*Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics*)

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**

(announcement of *final decision* to discharge probationary Ee did not entitle him to *Weingarten* rights)

Levingston Shipbuilding Company **249 NLRB No. 001**

(E's investigatory interview of Ee w/o affording Ee representation held not unlawful, since Ee's statements regarding representation referred to legal representation by a lawyer in ct, and were not a request for representation at the interview itself)

Kohl's Food Company **249 NLRB No. 013**

(no violation where although Ee reasonably feared that interview with personnel director might result in disciplinary action, she did not ask that U representative be present)

First National Supermarkets, Inc. d/b/a Pick-N-Pay Supermarkets, Inc. **247 NLRB No. 162**

(where Ee did not request U representation at disciplinary meeting no *Weingarten* violation exists; moreover, fact that discipline was justified is not determinative)

Texaco Inc. **247 NLRB No. 056**

5072-2400—Cont.

(E's denying Ee's request for U representation at his disciplinary interview, not violative, since sole purpose of the interview was to inform Ee of disciplinary action, and of final decision to impose discipline which had been reached prior to interview and was based upon facts and evidence which E had obtained prior to the interview; See *Baton Rouge Water Works Co., 246 NLRB No. 161*)

Perdue Farms, Inc. **JD-569-80**
(denial of Ee's request for witness at disciplinary meeting, not unlawful, since final, binding decision to impose suspension had already been made as evidenced by written disciplinary notice signed at time Ee requested witness)

Fedmart Stores, Inc. **JD-(SF)-280-80**
(no finding that E violated Act by depriving Ee of right to U representation during investigation regarding cash shortages where Ee failed to make request specific enough to be regarded as request for U representation w/i meaning of *Weingarten*)

Peschke Packing Company **JD-(NY)-33-80**
(violation where on two occasions E proceeded to interview Ee after ignoring latter's request for U representation made by Ee in reasonable belief that he was to be disciplined; no violation, however, where when Ee requested U steward's presence, E terminated interview, then recalled Ee after 5 minutes and informed him of discipline to be imposed)

United States Postal Service (Las Vegas, Nevada) **JD-(SF)-214-80**
(violation where E issued warning to Ee because he refused to participate in interview concerning blank spaces on his timecard w/o a representative)

Wolverine World Wide, Inc. **JD-185-80**
(discipline and ultimate discharge of Ee for her refusal to leave her work station w/o being accompanied by Ee representative to attend meeting with supervisor which she believed could result in imposition of discipline not violative for Ee has no protected right to refuse to go to office and can be lawfully disciplined for such refusal; See *Roadway Express* 246 NLRB No. 180 overruling *Glomac Plastics* 234 NLRB 1309)

Wolverine World Wide, Inc. **JD-185-80**
(Ee's rights were not violated where she was denied presence of Ee representative at interview with E as sole purpose was to inform her that decision had already been made to discharge her; See *Baton Rouge* 246 NLRB No. 161)

Roadway Express, Inc. **JD-868-79**
(no violation by refusal to allow Ee to have U steward present at interview which he reasonably feared might result in his being disciplined where E only summoned Ee to office to inform him that he was *getting a letter* but did not question him or engage in a dialogue or interchange)

Vulcan Fuel Corporation **JD-842-79**
(denial of Ee's request for U representation at interview in which Ee reasonably feared imposition of discipline, violative, eventhough no disciplinary action was taken against Ee at interview; if steward is absent, E must accept some delay in disciplinary process)

Vulcan Fuel Corporation **JD-842-79**
(once E is put on notice of invocation of ***Weingarten*** protections, if E expressly assures Ee that no discipline will result, and no discipline in fact occurs, E is under no obligation to furnish representation)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation where personnel manager required Ee to participate in absence-counseling interview w/o U representation, since personnel manager had authority to approve absence and unapproved absence could result in discipline)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill ***Weingarten*** functions than is another Ee)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(***Weingarten*** protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

Spartan Stores, Inc. v. N.L.R.B. **628 F.2d 953 (C.A. 6, 1980)**
(Bd finding that Ee was discharged for refusing to participate in interview he reasonably believed could result in disciplinary action w/o U representation reversed, since substantial evidence did not support Bd's application of *Weingarten* doctrine where Ee had no reasonable grounds to believe that interview might result in his discipline after E gave assurances that it would not, and concomitantly, Ee's action of getting steward himself, contrary to established policy that supervisor would summon steward upon Ee's request and orders of supervisors, does not imply possible disciplinary action)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**
(ct held contrary to Bd that Ee during disciplinary interview waived any right to U representation when Ee decided to proceed with meeting w/o U stewards present)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**
(requiring two Ees to attend investigatory interviews w/o presence of their U steward, violative; one Ee had requested supervisor to have shop steward accompany her to interview, and the other had called for the steward who responded to her call but was ordered back to work by plant manager)

5072-2500 Sponsorship of inside union

Carbonex Coal Company **248 NLRB No. 107**
(E solicitation of Ee to talk to fellow Ees about forming *company U* violative)

5072-2600 Interference with employees' right to selection own representative

Tom's Ford, Inc. **253 NLRB No. 125**
(E's ordering U representative out of shop and causing him to be removed by police from shop floor in presence of Ees held to constitute unlawful interference ,with Ees' right to select representatives for bargaining and presenting grievances where U representative had contractual right to investigate grievances and was investigating complaint that E was discriminating against U members in breach of contract by granting preferential treatment to nonmembers)

United States Steel Corporation **253 NLRB No. 083**
(discharge for repeated refusal to meet with supervisor, found not in derogation of *Weingarten* rights, notwithstanding Ee's request for presence of U representative at meeting with supervisor, since E does not have to assure Ee of U representative's presence at meeting to induce Ee to leave plant floor, and Ee acts at own peril if he declines to do so)

Omark-RCBS, A Division of Omark Industries **252 NLRB No. 089**
(E's statements requesting Ees to deal directly with management, asking for complaints or gripes and requesting opportunity to resolve problems, held violative since they constituted clear attempt to dissuade Ees from supporting U by soliciting grievances and holding out possbility of more favorable treatment)

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(supervisor telling Ee if he *wanted to keep working to stick with* E, unlawful since it amounted to both threat of discharge for supporting U and promise of benefit for opposing U)

General Thermo, Inc. **250 NLRB No. 158**
(threat that organizers of U could be fired, unlawful)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

5072-2600—Cont.

Lyman Steel Company **249 NLRB No. 040**
(blanket prohibition against any conversations in plant between Ees who supported disfavored U of E)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Lyman Steel Company **249 NLRB No. 040**
(pressing Ee to sign statement that he had received U authorization card from U advocate during working hours, violative, since activity, in anti-U context, suggested E planned reprisals for Ees who supported petitioner)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E who generally permitted Ees to talk while at work violated Act where on eve of election it prohibited pro-U Ee from talking to other Ees)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(permitting distribution of anti-U pamphlet among Ees during company time, violative, since pamphlet ratified implied threats of closure, loss of jobs and privileges)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(forbidding Ee from seeking U assistance in his drive for improvement of wages, pensions, and health benefits, violative)

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

Permanent Label Corporation **248 NLRB No. 021**
(E who asks Ees to tell other Ees to vote against U violates Act)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services **JD-(SF)-225-80**
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(calling suspected U adherent derogatory names prior to election, violative, since action discouraged Ee participation in U activities)

Standard Bridge Corporation **JD-174-80**
(accusing Ee of stirring up trouble by his attempts to obtain U membership and thus causing his own termination and other Ees' transfer, violative)

St. Regis Paper Company v. N.L.R.B. **623 F.2d 487 (C.A. 6, 1980)**
(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

5072-2700 Interference with employee's performance of duties as union representative

Tom's Ford, Inc. **253 NLRB No. 125**
(E's ordering U representative out of shop and causing him to be removed by police from shop floor in presence of Ees held to constitute unlawful interference with Ees' right to select representatives for bargaining and presenting grievances where U representative had contractual right to investigate grievances and was investigating complaint that E was discriminating against U members in breach of contract by granting preferential treatment to nonmembers)

L. E. Solomon, Inc. **253 NLRB No. 063**
(E who ordered U's shop steward to remove notebook, in which he kept information pertaining to U business, from its premises, violated Act)

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Woonsocket Spinning Company **252 NLRB No. 163**
(threatening Ee members of U negotiating committee who reported E's poor labor relations policies to Ees violative)

O. B. Williams Company **252 NLRB No. 146**
(supervisor directing U steward to intervene with Ees to obtain withdrawal of charges filed by Ees with State Human Rights Department, unlawful)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**
(threat to discharge U steward after he expressed intention to report E's abbrogation of collective-bargaining agreement to U violative)

Alfa Leisure, Inc. **251 NLRB No. 088**
(discharge of Ee for rude conduct violative where conduct occurred in collective-bargaining setting and in fact occurred while Ee was a U representative and was present solely for purpose of bargaining)

Hotel St. Moritz, Inc. **251 NLRB No. 015**
(no violation by E's questioning delegate status of former elected U delegate who appeared at E's meeting with another Ee at latter's request, since E's questioning was not in bad faith where the testimony of many witnesses showed considerable confusion as to whether former delegate retained his status)

Swift and Company **250 NLRB No. 152**
(supervisor's telling steward that fellow steward was *skating on thin ice* and *wouldn't last long* because she had filed grievance against supervisor held violative)

United States Postal Service **250 NLRB No. 156**
(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

United States Postal Service **250 NLRB No. 156**
(threatening U steward during grievance presentation with disciplinary action if he didn't shut up, unlawful)

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

U. S. Postal Service **JD-(SF)-242-80**
(supervisor held not to have threatened to retaliate against Ee because of U steward's insistence on investigating incident involving supervisor and Ee, or to have retaliated against attempts of U steward to investigate incident by issuing Ee a letter of warning, where Ee engaged in conduct which E reasonably viewed as insubordinate and supervisor immediately reported incident to his superiors at which time decision was made to discipline Ee, and such decision was reached several hours prior to steward's arrival at the scene)

L. R. Bob *Spillers Painting Co.* **JD-(SF)-169-80**
(E's attempt to have U business agent remove Ee as U steward not violative where request averted to U representative who had authority to appoint stewards, no Ees were present and no threats were given)

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's statement to U steward to the effect that if he performed his steward's duties with zeal considered excessive by supervisor, supervisor would make steward's job unpleasant and cause his eventual severance, unlawful)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation where E threatened U steward with possible discipline if he insisted on providing assistance to Ee during absence-counseling session, an investigatory interview)

5072-3000 Soliciting employees to cross picket line

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(no violation where in reply to Ee's question as to *how long strike would last* E replied Ees *could come back to work anytime* and he *had police protection for strikers*)

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(threatening non-unit Ees with loss of jobs if they refused to cross picket line, violative)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(violation, where applicant was informed Ees had elected to go U, that there might be strike, and asked whether she would cross picket line)

5072-3100 Rewarding nonstrikers

S & W Motor Lines, Inc. v. N.L.R.B. **621 F.2d 598 (C.A. 4, 1980)**
(payment of bonus to non-striking over-the-road drivers, unlawful)

5072-3300 Interference with testimony of Board witnesses

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(E's letter to all Ees implying that their signing of authorization cards was for *election only*, violative, since letter, which talked about their being possi-

5072-3300—Cont.

ble witnesses at hearing, was attempt to influence Ees' testimony at hearing on objections)

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

The Nestle Company **248 NLRB No. 106**
(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

5072-3800 Distribution of pro-company buttons, etc.

Reeves Rubber, Inc. **252 NLRB No. 026**
(violations by E's request that Ees wear anti-U badges, insignia and clothing stencilled with anti-U slogans; its participation through its supervisory personnel in stencilling of clothing and distribution of anti-U badges and insignia; and its placing Ees in position of appearing pro-U if they refrained from wearing the above insignia and stencilling)

Great Dane Trailers Indiana, Inc. **252 NLRB No. 015**

5072-3900 Interference with handbilling

Lika Corporation **JD-(SF)-69-80**
(removing U leaflets from automobiles in E-parking lot and throwing them away)

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**
(E's alleged interference with U handing out flyers on public sidewalk while not blocking entrance to E's premises, not unlawful, notwithstanding flyers also given to customers, where objections to election withdrawn, incident brief and isolated, U not precluded from distributing leaflets to all Ees, and absent intimidation of Ees)

5072-4000 Solicitation of statements from employees

Reeves Rubber, Inc. **252 NLRB No. 026**
(violations by E's request that Ees wear anti-U badges, insignia and clothing stencilled with anti-U slogans; its participation through its supervisory personnel in stencilling of clothing and distribution of anti-U badges and insignia; and its placing Ees in position of appearing pro-U if they refrained from wearing the above insignia and stencilling)

Dennis G. Maietta and Frank M. Maietta t/a
Maietta Contracting **251 NLRB No. 027**
(threatening Ees if they did not sign document which favored E by stating that Ee was satisfied with E's working conditions and did not want U, unlawful)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(solicitation of unlawfully discharged Ee to ask for his job back and tell other Ees that U was no good held unlawful solicitation to engage in antiU activity and conditioning of reemployment on acceptance of unlawful request)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(E preparing and circulating among Ees ptn for purpose of defense in ULP proceeding stating that there had been no changes in rules and regulations at E, unlawful, where E failed to meet requirements for negating coercive effect)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

5072-5500 Right to file grievances

Quik-Pik Food Stores, Inc. **252 NLRB No. 076**
(discharge of Ee allegedly for 3 infractions of E's rules after Ee had played significant role in advancing Ee complaints with other Ees, unlawful where 1 of alleged infractions was pretextual and other 2 infractions took on significance only after Ee participated in advancement of Ee complaints)

High Performance Tube, Inc. **251 NLRB No. 181**
(discharge of Ee for reading aloud list of grievances to assembled Ees violative)

Ford Motor Company **251 NLRB No. 066**
(supervisor's statement to Ees who filed grievances, contemplated civil suits and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

United States Postal Service **251 NLRB No. 033**
(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

Swift and Company **250 NLRB No. 152**
(supervisor's telling steward that fellow steward was *skating on thin ice* and *wouldn't last long* because she had filed grievance against supervisor held violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(threatening Ees with reprisals for engaging in protected activity of filing charges with Bd and grievance under contract, unlawful)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E's president informing U officer that had been filing grievances that *if she didn't give him a hassle* he would let her sign up for unemployment insurance compensation unlawful threat to oppose her receipt of unemployment compensation if she invoked contractual grievance procedure)

United States Steel Corporation **250 NLRB No. 059**
(E agreeing to post job only on condition that grievance protesting failure to post job be withdrawn, unlawful; particularly where job was subsequently posted w/o withdrawing of grievance after firing of grievance committeeman)

Trojan Transportation, Inc. **249 NLRB No. 084**
(discharge of Ees as reprisal for contractual grievance activities, unlawful)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Servomation Corporation **248 NLRB No. 014**
(telling Ee not to file a grievance with U over alleged safety matter because it could possibly result in Ee's discharge, unlawful)

Lane Trenching, Inc. **247 NLRB No. 183**
(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

St. Regis Paper Company **247 NLRB No. 105**
(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(discharge of Ee because she solicited Ees to see individual she considered to be *boss* rather going through regular channels regarding their complaints held violative, since Ee's conduct was protected activity and was not so flagrantly in derogation of E's *chain of command* or managerial authority as to loose protection of the Act notwithstanding *boss* had severed all official connections with E long before incident since subsequent conduct led Ee to believe he still exerted authority)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time*, w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

5072-5600 Disciplining employee for conduct during grievance meeting

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

High Performance Tube, Inc. **251 NLRB No. 181**
(discharge of Ee for reading aloud list of grievances to assembled Ees violative)

United States Postal Service **250 NLRB No. 156**
(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

5072-5800 Interference with representation on grievance committee

Pullman Trailmobile, A Division of Pullman
Incorporated **249 NLRB No. 059**
(statement by E that U steward was troublemaker and E was having problems in department which could reasonably be interpreted by U officials to mean that E's problem was overzealous steward who filed too many grievances and solution to problem was transfer of steward, unlawful)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

5072-6300 Interference with employees' free access to Board

Roberts Oldsmobile, Inc. **252 NLRB No. 035**

5072-6300—Cont.

(E's proposed strike settlement agreement held not violative notwithstanding that proposed settlement offer included provision for withdrawal of all *unfair labor practices pending as a result of the strike,* where the provision could not reasonably have been construed by Ees as restriction on their right to avail themselves of Bd's processes; Ees knew, as did E, that they were engaged in economic tug of war and none of Ees could reasonably expect reprisals based on charges having been filed and not withdrawn)

Alfa Leisure, Inc. **251 NLRB No. 088**

(promising Ee letter guaranteeing job for Ee's brother in order for brother to be eligible for parole if Ee withdrew charges pending before Bd, violative)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**

(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Garden State Motors Co. **JD-160-80**

(telephoning Ee after E received notice of filing of charge by Ee violative where done for purpose of extorting from Ee agreement to drop charge)

5072-6600 Right to file charges with Board or other governmental agency

O. B. Williams Company **252 NLRB No. 146**

(soliciting withdrawal of charges filed by Ees with State Human Rights Department and threatening job security of Ee if he didn't withdraw charge, unlawful)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

(asking Ees why they had not stopped Ee from filing certain papers with Bd)

St. Regis Paper Company **247 NLRB No. 105**

(statements to Eq; that filing ULP charges against E could lead to plant closure held violative)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**

(E informing Ee that due to her filing charges with Bd it would not continue to process her grievances under its internal procedures, violative, notwithstanding its subsequent good faith effort to process grievances)

Shuttle Motor Corporation **JD-327-80**

(discharge of Ee allegedly for inquiring of state agency regarding legality of *back stubbing* i.e. E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not unlawful, since Ee's activity not concerted where *back-stubbing* not matter of common complaint; further, Ee called agency before any other adverse action taken against him and subsequent *back-stubbing* against him rectified)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

5072-7700 Restraining union or other concerted activities on company time or premises

Villa Avila **253 NLRB No. 010**

(E-who evicted U representatives from job site, threatened them with arrest, blocked egress from site violated Act where U representatives were performing legitimate duties on job site)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**

(supervisor threatening Ees with discharge if they did not keep out of U, or if they did not bring to her U material received in mail, unlawful)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**

(telling Ees not to engage in any discussions about U and that U was *dead* and *over*, unlawful)

Custom Coating & Laminating Corporation **249 NLRB No. 117**

(threatening Ee with discharge if he continued to speak with other Ees during work time violative where Ee's job required him to speak to other Ees and Ee was well known U adherent)

5072-7750 Distribution of union literature or cards

Stewart-Warner Corporation **253 NLRB No. 016**

Conagra, Inc. **248 NLRB No. 085**

(informing Ee who had had argument with Ee who was wearing *Vote No* hat that she was not to talk U on company time and U literature was not to be passed out in plant, unlawful, since statement not limited to prohibition during work))

Permanent Label Corporation **248 NLRB No. 021**

(solicitation process includes distributing U card, signing by Ee and return of card to solicitor, therefore rule banning such activity during nonwork time in work areas is overly broad)

National Southwire Aluminum **247 NLRB No. 175**

(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

CTS Keene, Inc. **247 NLRB No. 141**

(warning U adherent to observe E's no solicitation rule, unlawful, where given w/o any apparent basis)

Tartan Marine Company **247 NLRB No. 073**

(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks*, violative)

J. H. Block & Co., Inc. **247 NLRB No. 041**

(notice E posted on company bulletin board prior to election which asked Ees to report to E if they were put under pressure to join U violative as it had potential effect of encouraging Ees to report to E identity of U card solicitors and also to discourage card solicitors in their protected organizational activities)

Magic Mountain Corporation **JD-337-80**

(supervisor's statement that Ee should drop his U activity or else lose his job, unlawful)

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**

(E's statement to Ee that she would not have been recalled after her discharge if he had not learned that she did not give another Ee U card, violative)

5072-7775 Wearing of or display of union insignia or other materials

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**

(removing U authorization card which Ee taped to his locker, violative where E permitted non-U material to remain)

B. E. & K., Inc. **252 NLRB No. 036**

(supervisor's preelection statement to Ees that wearing of U stickers revealed belligerency, unlawful and interference, where supervisor had previously threatened Ees with discharge for distributing stickers)

Reeves Rubber, Inc. **252 NLRB No. 026**

(E's threatening job interest or tenure of Ees because they wear U buttons insignia, unlawful)

Stafford Construction Co. **250 NLRB No. 128**

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**

(violation by instructing Ee to remove U sticker pasted on his locker)

The Nestle Company **248 NLRB No. 106**

(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

Fluid Packaging Company, Inc. **247 NLRB No. 196**

(request that Ee remove 10-by-16 inch *vote yes* sign from her back for safety's sake since it was causing distraction among Ees on lines, not unlawful; E did not interfere with Ees' wearing of *Yes* and *No* buttons)

Pay 'N Save Corporation **247 NLRB No. 184**

(E's unwritten rule against wearing of political or controversial buttons, including U buttons, unlawful, where there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

Pay 'N Save Corporation **247 NLRB No. 184**

(E's enforcement of rule against wearing of buttons on store premises, unlawful, where E allowed Ees to wear various kinds of religious as well as other buttons but disparately enforced its button policy against Ees wearing U buttons)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**

(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

5072-7787 Other restraints

Stewart-Warner Corporation **253 NLRB No. 016**
(informing Ee that she was not allowed to talk to other Ees about U or their pay or vacations while at work, violative)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(instructing Ees not to speak with reinstated Ee and to stay out of her department, held violative)

Syracuse Dy-Dee Diaper Service **251 NLRB No. 135**
(E's telling Ee he did not want to hear anything more about U, violative)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(E's searching Ee's locker for U documents, unlawful)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(prohibiting Ees from entering into work room of U activist held violative)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation where, in response to Ee's demand for improved working conditions, E told Ee that she should keep her mouth shut and not start trouble)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee with regard to another Ee not to talk U with that Ee, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat,* unlawful)

Conagra, Inc. **248 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

Roadway Express, Inc. **JD-281-80**
(superintendent questioning of Ee as to why Ee had called U business agent about allegedly unsafe truck and instructing Ee to call superintendent directly, lawful, where superintendent was giving instruction to newly assigned driver as to proper procedure to follow in event of breakdown and superintendent did not forbid Ees from discussing safety matters or complaints with U officials)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

5072-8000 Confiscating union literature, etc.

Clinton Inn **249 NLRB No. 022**
(confiscating U cards from Ees and removing U leaflets from cars in Ees' parking lot, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

Lika Corporation **JD-(SF)-69-80**
(removing U leaflets from automobiles in E-parking lot and throwing them away)

5072-8300 Interference with union or employee meetings

Herman Brothers, Inc. **252 NLRB No. 121**
(supervisor informing Ee who had been given permission to take off next day that if Ee, who opposed ratification of proposed contract, went to U hall next day Ee would be given warning letter for excessive absenteeism, unlawful, since supervisor never denied Ee had previously been given permission to take day off and E's concern was that reason Ee wanted to be off was to attend tally of mail ballot on contract ratification)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(issuing mailgram to Ees, which was related to scheduled U meeting in another city, advising them not to leave their duty assignment area w/o E's express approval, unlawful, where E had never before instituted rules by mailgram)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(contention that U council's suspension of Ee-staff members on ground that, by holding U meeting at parent organizations facility, they engaged in disloyal act, rejected, since Sec. 7 of Act is broad enough to encompass Ees' decision to choose, free of E interference, situs of their U meeting)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(telling Ees not to attend U meetings, encourage U representation, or sign U cards, unlawful)

E. I. Dupont De Nemours and Company **JD-615-80**
(violation where E stated that safety program was management responsibility which precluded Ee participation or criticism contrary to program's structure)

5072-8500 Interference with strike or picketing

Inta-Roto, Inc. **252 NLRB No. 111**
(where Ees engaged in economic strike, E's termination of collective-bargaining agreement violative)

Inta-Roto, Inc. **252 NLRB No. 111**
(E's notification to ULP strikers that they had been permanently replaced is illegal threat of permanent replacement)

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(threatening non-unit Ees with loss of jobs if they refused to cross picket line, violative)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(threatening attorney Ees with discipline for participating in clerical picket line, and entering notations in their personnel files that they had engaged in such activity, unlawful)

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Giant Food Markets, Inc. and S. S. Kresge Company v. N.L.R.B. **633 F.2d 18 (C.A. 6, 1980)**
(remand for evidence on effect of relocating, pursuant to TRO, area standards pickets from private property near store entrance to public area across parking lot at entrance to 2-store shopping center and to determine, (1) whether picketing at store entrance is protected, and (2) whether E's peaceful demand that pickets leave, violated 8(a)(1))

5072-8600 Retaliation for engaging in union or other protected activity

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge violative where another Ee was disciplined with only 1-day suspension for concerted activity similar to that of discharged Ee)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge for Ee's alleged disruptive behavior and generally *poor attitude* which caused supervisor to *watch* her, held violative where Ee's propensity to engage in protected concerted activity caught attention of E which was motivated to engage in *special surveillance* of Ee's work performance and to seize upon her first alleged transgression as pretext to terminate her)

Wyman-Gordon Company **252 NLRB No. 168**
(discharge of U adherent for failing to notify E that he did not attend classes for which he was subsequently paid, violative, where E's record keeping difficult to understand, Ee offered to return unearned money to E which offer refused and anti-U attitude of E)

Woonsocket Spinning Company **252 NLRB No. 163**
(telling Ee he might have received bonus if he had not voted for U)

Elizabeth Motors, Inc. **252 NLRB No. 161**
(revoking Ees privilege of working on their own cars in E's shop and using telephone for personal calls)

J. J. Security, Inc. **252 NLRB No. 180**
(requiring Ees to sign resignation forms or else stop seeking improvements in their working conditions violative)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(requiring discriminatees entitled to reinstatement to be interviewed before they were allowed to return to work held violative where such requirement had no legitimate business justification)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(after her reinstatement, Ee's being assigned full time to arduous machine work when she had shared time on machine with other Ees and being denied same lunch break given other Ees in department held violative, since inference was warranted that Ee was being made to suffer for her concerted action and U activities)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(instructing Ees not to speak with reinstated Ee and to stay out of her department, held violative)

Albertsons, Inc. **252 NLRB NO. 081**
(discharge of Ee for insistence on break periods provided for in collective-bargaining agreement violative)

United Services For The Handicapped **251 NLRB No. 117**
(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(refusing to allow to return to work Ees who had walked off job to protest reduction in piecework rate violative and in effect constructive discharge)

5072-8600—Cont.

Universal Service Contractors **247 NLRB No. 097**
(threatening striking Ees with discharge if they did not return to work violative)

Bucyrus-Erie Company **247 NLRB No. 059**
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

Monongahela Steel Corporation **JD-392-80**
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

Dooley Equipment Corporation **JD-215-80**
(threatened discharge for voting in election)

Carlson Roofing Co., Inc. v. N.L.R.B. **627 F.2d 77 (C.A. 7, 1980)**
(in discussion with E Ees voicing their opposition in orderly fashion to E's interpretation of contract provision that Ees had to work alone on jobs and no Ee flatly refused to work alone, held protected concerted activity)

5072-8800 Supervisors' participation in intra-union activities

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(fact that assertedly supervisory Ees signed ptn to E to recognize U held, in circumstances of case, not to have tainted ptn nor unduly influenced Ees who signed it)

5072-9200 Interference with intra-union activities

Welfare and Pension Funds, Blasters, Drillrunners and Miners Union Local No. 29 and Their Trustees Louis Sanzo, Amadio A. Petito, Paul Crowley, and Theodore King **251 NLRB No. 165**
(Ee of U pension fund involved in protected intra-U activity when he protested to President of U.S. about loss of U jobs, how members were referred to jobs, sought reelection as secretary-treasurer of U; discharge for such activity violative)

5072-9900 Interference with or attempt to influence intra-U election

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(E's statement to Ee who, during her campaign for U office distributed leaflet depicting E and U official in caricature with arms linked, that E could sue Ee for slander, not unlawful, where E's remark was not critical of leaflet's political message nor related to Ee's intra-U activities, but rather was directed to misspelling of his name and portrayal of him in caricature)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(E's statement to Ee, engaged in campaign for U office, ordering her back to her work area and stating he ought to have her locked up for damage she had already done, not unlawful, where E made no specific reference to Ee's electioneering, there was no evidence establishing that E knew Ee was campaigning, and there is no showing that Ee had campaign material in her possession at that time)

5078 INTERFERENCE WITH ELECTION OR REPRESENTATION PROCEEDINGS OF BOARD

5078-2000 Assistance to one of competing unions

St. Regis Paper Company v. N.L.R.B. **623 F.2d 487 (C.A. 6, 1980)**
(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

5078-4000 Efforts to influence result

Catalina Yachts **250 NLRB No. 048**
(distributing *Vote No* buttons and T-shirts as well to Ees, unlawful since Ees were forced to manifest their choices and the shirts were of value to Ees and intended to influence their votes; inducement of Ee to wear *Vote No* button, unlawful for same reasons)

5078-4020 Concessions to influence vote

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(bus service provided by E to its Ees week before election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

Permanent Label Corporation **248 NLRB No. 021**
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

Connecticut Foundry Company **247 NLRB No. 145**
(increase granted immediately prior to election while Ees were on strike violative)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(E who revoked written warning to Ee 1 week prior to election with purpose of causing Ees to reject U as their bargaining representative violated Act)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

Chef's Pantry, Inc. **247 NLRB No. 018**
(instituting new educational program before election, unlawful)

5078-4025 Withholding benefits to influence vote

Chef's Pantry, Inc. **247 NLRB No. 018**
(discriminatorily denying benefits of newly-instituted educational program to leader of organizing campaign, unlawful)

Chef's Pantry, Inc. **247 NLRB No. 018**
(revising long-standing policy prohibiting beards, and shortly before election permitting Ees to grow beards, unlawful)

The Marley Heat Transfer Company **JD-(SF)-263-80**
(no violation where E who recently purchased plant promised that new wages and benefits package would take effect on certain date but before election told Ees that if U won, E would negotiate with U concerning wages and benefits, where E's package was *discretionary* and amount had not been determined before advent of U or election)

5078-4035 Accelerating effective date of wage increase

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(violation where E accelerated announcement and effective date of wage increase and added benefits in order to influence Ees during election campaign)

5078-4050 Promise of benefit

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(formal promise to grant specific wage increase to avoid unionization, violative, notwithstanding that prior to organizing campaign E made vague promise of wage increase)

Lyman Steel Company **249 NLRB No. 040**
(promising Ees wage increase if they withheld their support from Us, held violative)

St. Francis Hospital **249 NLRB No. 017**
(working conditions would improve if U lost election)

Carbonex Coal Company **248 NLRB No. 107**
(promise to Ees of tonnage bonus if U was defeated)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

Faith Garment Company, Division of Dunhall Pharmaceutical, Inc. v. N.L.R.B. **630 F.2d 630 (C.A. 8, 1980)**
(notwithstanding decision to grant pension benefits was made prior to onset of organizational campaign, announcement of pension plan and presentation to Ees of misprinted certificates w/o comment on error during anti-U speech day before election held violative where these facts provide substantial support for Bd's finding that purpose of announcement was to cause Ees to reject U)

5078-4070 Hiring or retaining antiunion employees

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

5078-4080 Changes in conditions of employment or threats thereof in connection with election

Blue Bird Body Company **251 NLRB No. 196**
(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to

5078-4080—Cont.

company E and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(foreman's threatening Ees that E would discharge Ees who voted for U held violative)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company **249 NLRB No. 040**
(telling Ee that E intended to fire U activist if E lost R election)

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

Lyman Steel Company **249 NLRB No. 040**
(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off,* held violative)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(E who revoked written warning to Ee 1 week prior to election with purpose of causing Ees to reject U as their bargaining representative violated Act)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(E's announcement to Ees that it had discharged both plant and production managers not violative absent evidence to show that they had mistreated Ees or how their discharges would benefit Ees)

Dooley Equipment Corporation **JD-215-80**
(threatened discharge for voting in election)

5078-7000 Refusal to furnish Excelsior list

St. Francis Hospital **249 NLRB No. 017**
(where excelsior list provided by E contained some incorrect and misleading information; such as, surnames and first and middle initials and E failed to inform R/O of corrected addresses, no violation as no evidence that E intended to willfully frustrate Bd processes; however, if facts revealed such willfulness violation could be found)

5078-8000 Restraining employees from voting

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(statement by E president to U organizer, asking her whether she wanted to stay home on day of election and telling her she should do so if she desired, unlawful)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(interfering with Ee's right to vote in U election by questioning her eligibility while expressing opinion that she should not vote or that it would look bad for other departments or Ees for her to vote, unlawful)

5078-8100 Curtailing employee's union activities by promotion to supervisor

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(promotion of *housekeeper* who was U adherent to *assistant executive housekeeper* a few days before election and where position of a second assistant executive housekeeper had not existed before, violative, since purpose of promotion was to curtail her U activities)

5078-9000 Questioning employees on how they voted

Catalina Yachts **250 NLRB No. 048**
(distributing *Vote No* buttons and T-shirts as well to Ees, unlawful since Ees were forced to manifest their choices and the shirts were of value to Ees and intended to influence their votes; inducement of Ee to wear *Vote No* button, unlawful for same reasons)

Connecticut Foundry Company **247 NLRB No. 145**
(E who asked returned striker if he had voted for U when Ee asked for raise violated Act)

5081 INTERFERENCE WITH BOARD PROCEEDINGS

Cartex Corporation **JD-436-80**
(Ee utilization of Bd's remedial processes is protected by Sec. 7 of Act, and there should be as great a freedom to ask Bd for relief as there is to petition any other department of government for redress of grievances; moreover, protection of Act is not limited to only meritorious pleas to Bd)

5081-1700 Interference with Board investigation

Bechtel Power Corporation **248 NLRB No. 166**
(E's insistence that supervisor who had filed charges with Bd could talk to Bd agent only in presence of company attorney, violative, since presence of company attorney would inhibit supervisor in giving information regarding charges filed in aid of all Ees)

Four Rivers Coal Company **JD-209-80**
(violation where E warned and instructed Ee not to sign statements for GC then investigating and prosecuting ULP case and requested a copy of any statement signed by such Ee)

Albertson's Inc. **JD-(SF)-104-80**
(questioning Ee about Ee's participation in Bd investigation, unlawful, since E did not show that questioning was for legitimate purpose and there was no requisite showing of voluntariness to Ee's participation in questioning)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(ct reversed Bd's finding that E's notice to Ees after U had lost election and after Bd's complaint against E had issued advising them they were not obligated to talk to Bd agent or sign anything, and that agent only wanted Ees' signatures to force E to recognize U was unlawful, especially because subsequent notice cured any coercive effect in first notice by stating Ees were free to talk to agent and that technically agent was assisting Bd attorney who would be presenting the case and would not actually be working for U)

5081-3300 Interference with testimony of Board witness

Peat Manufacturing Company **251 NLRB No. 153**
(no violation where in response to subpoenaed witness's question as to what could be done to her if she did not appear at hearing, E's lawyer said nothing much unless Bd sought enforcement, since attorney under no obligation to affirmatively advise witness of her obligation to honor subpoena in absence of question regarding whether to appear or not)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(suggesting to Ee that she could disregard Bd subpoena, encouraging her not to appear at Bd hearing and threatening her with reprisal unless she testified favorably to E, unlawful)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's suggestion to Ee, when Ee produced subpoena requiring his presence at Bd hearing, that Ee remember that E had told Ee *to tell the guys to stay at the machines,* held violative of 8(a)(1) but not 8(a)(4), since E thereby restrained and coerced Ee in exercise of protected right and obligation to give testimony under Act)

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation where, when Ee mentioned that he had been subpoenaed and intended to try to stay close to what his affidavit to NLRB officer said when he testified, E's agent asked to see his affidavit; assurance that production of affidavit was voluntary did not exculpate request)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(questioning Ee regarding investigation by Bd agent)

The Nestle Company **248 NLRB No. 106**
(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

Coastline Coal Corporation **247 NLRB No. 100**
(telling Ee that he would be reinstated if he withdrew his charge against E and that he should not testify against E in Bd hearing, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(asking Ee who was expected to be subpoened to testify at Bd hearing *if she had received a paper about going to ct* and that if it came by registered mail she did not have to pick it up at the post office and nothing could be done about it if she did not pick it up)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(refusal to permit subpenaed Ee to attend Bd hearing, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's speech stating to Ees that it would learn at trial identity of Ees who made allegedly false accusations against E, unlawful, since it tended to create fear of retaliation in minds of Ees who identified themselves in such manner, and E thereby inhibited vindication of their statutory rights by their testimony at Bd hearing)

Four Rivers Coal Company **JD-209-80**
(violation where E warned and instructed Ee not to sign statements for GC then investigating and prosecuting ULP case and requested a copy of any statement signed by such Ee)

World Wide Press, Inc. **JD-(SF)-12-80**
(harassment of Ee about testimony adverse to E that she had given at prior Bd hearing, unlawful)

5081-4100 Interference with Board-ordered remedies

Thermo Transport, Inc. **JD-584-80**

5081-4100—Cont.

(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

5081-7000 Interference with access to Bd processes

Salem Transportation Co., Inc. **252 NLRB No. 155**
(telling Ee that he was harassing E by filing charges with governmental agencies, including NLRB, violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(threatening Ees with reprisals for engaging in protected activity of filing charges with Bd and grievance under contract, unlawful)

Cartex Corporation **JD-436-80**
(interrogating Ee concerning ULP charge he had filed against E with Bd, and threatening Ee with physical harm and referring to Ee in racially derogatory manner because he had done so, unlawful)

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**
(enforcement denied where ct adhered to standards set down in *Bourne* in regard to whether E's interrogation of Ee violated 8(a)(1) and found that record in proceedings lacked substantial evidence to support conclusions contrary to those of ALJ, or to support view that interrogation in any way interfered with Ee rights)

5081-8700 Inducement of withdrawal of charges

Shirt Shed, Inc. **252 NLRB No. 042**
(threat to discipline Ee if she did not withdraw charges filed with Bd by U on her behalf violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's statement to Ee that he was creating a *hell of an image... and not helping yourself* by filing charges with Bd and grievance under contract, and that Ee should drop his charges with Bd, and that he could not win and was hurting himself in E's eyes, unlawful)

Coastline Coal Corporation **247 NLRB No. 100**
(telling Ee that he would be reinstated if he withdrew his charge against E and that he should not testify against E in Bd hearing, unlawful)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

5082 ACTIONS AGAINST SUPERVISOR

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

5082-2500 For activities inconsistent with status as supervisor

Times Herald Printing Company **252 NLRB No. 043**
(discharge of supervisory Ees for engaging in U activities not violative where discharges in no way affected other Ees' rights)

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(*discharge of supervisor solely for that supervisor's own U activities does not contravene...Act*)

5082-5000 For testimony adverse to employer

Alfred M. Lewis, Inc. **250 NLRB No. 088**
(at grievance hearing)

5084 ASSISTANCE TO UNIONS

5084-0100 Generally

Argano Electric Corp. **248 NLRB No. 049**
(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held *violative of Sections 8(a)(2), (3), (5) and (1) of Act*)

5084-2500 Assistance where 8(a)(2) not found

5084-2567 Inside or favored union

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

United States Postal Service **248 NLRB No. 097**
(postal service's conduct permitting outside U's representative, during new Ee orientation sessions, to make purportedly misleading or disparaging remarks about incumbent U's exclusive bargaining status, not unlawful; statements were not attributable to postal service and it made effort to dispel possible misunderstandings on part of new Ees, provided incumbent U opportunity to respond to reval U's remarks, and informed Us of consequences of iterating possibly disrespectful or misleading remarks)

5084-5000 Forms of assistance

5084-5033 Contract with assisted union

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

Stroehmann Brothers Company **252 NLRB No. 139**
(new owner of business entering into contract and honoring same with U purporting to cover unit of shipping Ees historically represented by another U, violative)

Campus Housekeeping, Inc. **252 NLRB No. 072**
(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

Baine Service Systems, Inc. **248 NLRB No. 087**
(Ee's would be discharged if they refused to sign checkoff authorization cards in favor of illegally recognized U)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E's statement that Ees must become members of illegally recognized U to keep their jobs violated Act)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5050 Exclusive recognition of minority union

Stroehmann Brothers Company **252 NLRB No. 139**
(new owner's recognizing U as representative of shipping Ees who historically were in unit of another U, violative, where U did not represent uncoerced majority of shipping Ees)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

5084-5050-3300 Good faith as to majority status immaterial

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5050-6700 Subsequent acquisition of majority status immaterial

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful since committee at time of recognition did not represent uncoerced majority

5084-5050-6700—Cont.

of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5067 Inducement of employees to join union

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E offering wage increases during negotiations with Ee committee, unlawful, since made to discourage support for outside U in view of E's haste in presenting proposals after obtaining knowledge of outside U's organizing efforts)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(E's alleged promise to obtain U membership cards to permit Ees to work unmolested on U jobs, not unlawful, where evidence showed that Ees did not reasonably believe that E proposed to foist U membership on them; although E initiated possibility of obtaining spurious U affiliation, Ees on own initiative sought genuine representation)

5084-5075 Permitting union control over hiring and employment

Cowlitz Studd Company **JD-(SF)-141-80**
(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

5084-5083 Solicitation of employees

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

5084-7500 **Midwest Piping doctrine**

N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULP charges against E, Bd postponed election until resolution of charges and while charges pending 1 U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts, Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's orders against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

N.L.R.B. v. Newport Div. of Wintex Knitting Mi lls, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULp charges against E, Bd postponed election until resolution of charges and while charges pending (U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts) Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's order against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

5090 CONTRACTS

5090-5000 **Affirmative defenses**

5090-5050 Contract provision

Irvin H. Whitehouse & Sons Company **252 NLRB No. 140**
(discharge of Ees who refused to work because of safety hazards violative where contract did not contain no-strike provision)

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

Carlson Roofing Co., Inc. v. N.L.R.B. **627 F.2d 77 (C.A. 7, 1980)**
(in discussion with E Ees voicing their opposition in orderly fashion to E's interpretation of contract provision that Ees had to work alone on jobs and no Ee flatly refused to work alone, held protected concerted activity)

5090-7500 **Union-security agreements**

5090-7525 Execution or maintenance of invalid agreement

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(enforcement of agreement with security clause where U did not have majority, unlawful)

5090-8700 **Discriminatory maintenance of contract clause**

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

5090-8750 Superseniority

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

5096 VIOLENCE AND THREATS THEREOF

5096-2100 **Arrest**

Villa Avila **253 NLRB No. 010**
(E-who evicted U representatives from job site, threatened them with arrest, blocked egress from site violated Act where U representatives were performing legitimate duties on job site)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

Schlegel Oklahoma, Inc. **250 NLRB No. 012**
(threatening arrest of Ees for handbilling Ees on public thoroughfare adjacent to plant entrance, unlawful)

5096-2800 **Assault on, and abuse of, pickets**

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(E who drove truck through picket line so recklessly that two pickets were hit violated Act)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where pickets belligerently prevented E from driving its truck through picket line, E's physical retaliation against pickets not violation of Act)

B. N. Beard Company **248 NLRB No. 016**
(threatening picket with vehicular assault by driving vehicle close to him at excessive speed, unlawful)

5096-8000 **Assault on union representative or threat thereof**

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(violation, where guard hired by E during strike cursed U representatives who were in car on public street in front of E's premises, shouting *we don't want to see you any more*, and pounded on representatives' car in presence of strikers)

5096-8400 **Threats of bodily harm**

Overnite Transportation Company **251 NLRB No. 140**
(discharge of Ee truckdriver and refusal to reinstate him assertedly because he refused to drive, unlawful where Ee was complaining with other Ees about threat to personal safety because of driving during strike; Ee was refusing to drive as part of concerted attempt, on behalf of both himself and other drivers, to have safer working conditions and Ee's discharge was to discourage Ee and other Ees from engaging in these activities)

McLane/Western, Inc. **251 NLRB No. 185**
(E's remark that he wanted to punch Ee in the nose for initiating U campaign violative where remark could reasonably be construed by Ee and fellow Ees as threat rather than as joke that E alleged it was meant to be)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(violation where E threatened to inflict physical injury on Ee because of his filing charge with Bd and telephoning state department of human rights in response to E's refusal to make Ee an apprentice printer and pay him the contractual wage rate)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(supervisor's firing pistol in air while conversing with Ee on picket line, unlawful)

B. N. Beard Company **248 NLRB No. 016**
(E's statement to picketing Ee that E would kill him if E found him anywhere around plant, not unlawful, since it was incredible that E literally intended to do so; however, such statement is not to be equated to lawful Ee picketing conduct)

7500 AFFIRMATIVE DEFENSES TO CHARGES OF INTERFERENCE, RESTRAINT, OR COERCION

7525 NON-COERCIVE NATURE OF MISCONDUCT

Chester Valley, Inc. **251 NLRB No. 190**

7525—Cont.

(contention that E's oral comments as to eliminating part-time Ees or their flexible work hours were not unlawful because Ees who heard remarks were not themselves part-time Ees, rejected, since it is reasonable to infer that E's remarks were passed along to part-time Ees, as they actually were; assuming that E did not thereby intend to threaten Ees and that Ees were not in fact coerced, such assumptions would not render threats herein lawful)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(although some Ees testified that they did not feel personally threatened by E's remarks against unionization, ALJ held focus of inquiry is not subjective reaction of Ee to electioneering but upon reasonable tendency of actions involved to interfere with Ees' rights)

General Thermo, Inc. **250 NLRB No. 158**

(assistant plant manager's interrogation of Ee as to his U activities, unlawful, notwithstanding social nature of occasion in which interrogation took place)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**

(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**

(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**

(payroll supervisor's response to U steward's request for his paycheck, to effect that ----*you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

Werth Engineering, Inc. **JD-295-80**

(questioning of Ee by E about his U activities is inherently coercive and fact that supervisor and Ee are personal friends is immaterial)

Flexsteel Industries, Inc. **JD-(SF)-274-79**

(supervisor's friendly warnings to Ees about foremen being instructed to be on lookout for Ees distributing U literature, not unlawful)

N.L.R.B. v. Jarva Incorporated **623 F.2d 483 (C.A. 6, 1980)**

(supervisor predicting to Ee and to another Ee that because Ee was instigator of U that Ee would be head committeeman once U got in, not unlawful, since statements made jokingly and Ees stated they felt no coercion)

7550 MISCONDUCT OF EMPLOYEE

7550-0100 **Generally**

7550-0125 Condonation vitiates defense

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**

(E's remarks blaming Ee for strike violative, since E had condoned Ee's conduct where, assuming Ee was responsible for work stoppage and work stoppage was violative of no-strike clause as contended, E had allowed Ee to return to work and Ee worked for several weeks)

Brunswick Corporation **JD-600-80**

(Ees' discharge not violative, where GC failed to sustain burden of providing that E had condoned, as asserted, Ees' unlawful work stoppage)

Cracker Barrel Old Country Store, Inc. **JD-443-80**

(defense of long break periods and criticism of management rejected, where management had condoned them prior to alleged unlawful discharge herein)

Owens-Corning Power and Process, a Division of Owens-Corning Fiberglas, Inc. **JD-(SF)-208-80**

(where Ees engaged in economic strike which was initially rendered unprotected by breach of no-strike clause, E's later condonation of strike by reinstatement of strikers and its agreement that *the slate would be wiped clean* estopped it from asserting unlawful nature of strike)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**

(contrary to Bd, ct held discharge of two Ees under mistaken belief they had engaged in strike misconduct, not unlawful, since Ees had participated in illegal wildcat strike and record evidence does not substantially support conclusion that E condoned or otherwise forgave Ees for their illegal conduct)

7550-0133 Lawful discipline or admonition

General Telephone Company of Michigan **251 NLRB No. 099**

(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(defense by E, operating legal services as contractor of federal agency, on ground that statute establishing agency forbade Ee conduct for which they were allegedly unlawfully disciplined, rejected; enabling statute is construed to refer to NLRA, to have recognized its provisions, and to have incorporated various interpretations and applications of Sec.7)

Lika Corporation **JD-(SF)-69-80**

(denying Ee, suspected of starting 2 fires in E's plant; access to E's parking lot when he was not working not violative)

7550-0143 Disloyalty of employer

Pyromactics, Inc. **251 NLRB No. 141**

(Ee's circulation of ptn to obtain time off during holiday season did not justify discharge on ground of *disloyalty* based on Ee's continued activity after E had explained that production requirements would not permit time off, and on Ee's statement that Ees, as group, would fake sickness so as not to report for work during holiday period; statement was not reason for discharge and, while Ee's desire for time off may have demonstrated bad judgment, it gave E only the right to refuse time off, not to discharge Ee for his protected concerted activity)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**

(informing Ee she was to be put on probation for failing *to voice her concerns in constructive manner* where she failed to attend meeting with management on her own time to discuss working conditions, and had allegedly made statements regarding incompetency of management to third parties, unlawful, since refraining from exercising her Section 7 right to attend meeting, protected; further, E lacked sufficient evidence of Ee's criticism to third parties on which to base honest belief of misconduct required for punitive action; fact probation never put into effect did not mnullify unlawful threat to discipline)

Hotel & Restaurant Employees and Bartenders Union Local 2 **JD-(SF)-178-80**

(discharge of Ee for participation and distribution of leaflet protesting discharge of fellow Ee violative; contention that Ee was discharged for disloyalty rejected)

N.L.R.B. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, Teamsters **630 F.2d 505 (C.A. 7, 1980)**

(dismissal of Ees who had complained about staff salaries not unlawful, in view of Ees' injection of salary complaints at stewards' meeting which included attendance by stewards not employed by E, admittedly improper use of company CB radio regarding complaints, presentation of wage complaint letters at civic luncheon, general and repeated refusal to follow established, proper and known procedures for presenting wage complaints, coupled with their prior poor work records for which they had been given prior warnings and a *second chance*)

7550-0150 Good-faith belief as to misconduct may be defense

General Telephone Company of Michigan **251 NLRB No. 099**

(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

7550-0175 Mistaken belief as to misconduct no defense if conduct in fact did not occur

Stewart-Warner Corporation **253 NLRB No. 016**

Huron Dressed Beef, Inc. **252 NLRB No. 031**

Babcock & Wilcox Co. **249 NLRB No. 099**

(discharge of U president because of E's erroneous belief that, while engaged in protected activities associated with his office of U president, he had instigated wildcat strike and promoted it w/i U, unlawful; in view of such finding and since remedy would be same, Bd found it unnecessary to decide whether or not E also violated 8(a)(3))

7550-2500 **Undermining or circumventing grievance procedure**

United States Postal Service **250 NLRB No. 156**

(U steward's action in refusing to leave office of E's station manager at grievance proceeding after manager cut off U steward's presentation, did not justify E's disciplinary action against him)

7550-5000 **Insubordination**

United States Postal Service **252 NLRB No. 083**

(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Sullair P.T.O., Inc. **250 NLRB No. 104**

7550-5000—Cont.

(discharge of Ee unlawful, notwithstanding E's contention that discharge was result of Ee's insubordination and abusive language directed at E's manager in Ee's protest of change in company policy affecting condition of employment, where Ee's language was generally directed toward company and not to E's manager and was type of language used commonly in Ee's shop)

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

Southwest Detroit Hospital **249 NLRB No. 071**
(discharge of licensed pratical nurse who informed supervisor he was concerned he had not been put in charge of shift and received premium charge pay provided for under contract and that he thought supervisors had made stupid decision by placing nursing technician in charge not unlawful, where discharge for his precipitous decision to leave subsequent meeting with supervisor and reusal to discuss matter further rather than for invoking terms of bargaining agreement)

Wilson Foods Corporation **JD-(SF)-272-80**
(suspending U president for replying *None of your goddam business* to supervisor who asked why he was on plant floor after shift and ordered him to *get the hell out* held violative, where swearing was common, language was part of *res gestae* of protected activity, Ee was gathering job data for International and E had refused data to U and Ee)

Roadway Express, Inc. **JD-281-80**
(discharge of Ee for refusing to obey order, lawful, notwithstanding Ee's contention that he was discharged for making a safety complaint to Department of Transportation since there was no basis for concluding that E had any knowledge of Ee's compalaint)

Best Foods CPC Company **JD-148-80**
(no violation where Ee was suspended w/o pay for her refusal to report to supervisor's office in connection with her alleged failure to punch out in violation of company rule)

N.L.R.B. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, Teamsters **630 F.2d 505 (C.A. 7, 1980)**
(dismissal of Ees who had complained about staff salaries not unlawful, in view of Ees' injection of salary complaints at stewards' meeting which included attendance by stewards not employed by E, admittedly improper use of company CB radio regarding complaints, presentation of wage complaint letters at civic luncheon, general and repeated refusal to follow established, proper and known procedures for presenting wage complaints, coupled with their prior poor work records for which they had been given prior warnings and a *second chance*)

7550-6000 Breach of employer's rules

CTS Keene, Inc. **247 NLRB No. 141**
(warning U adherent to observe E's no solicitation rule, unlawful, where given w/o any apparent basis)

Wilson Foods Corporation **JD-(SF)-272-80**
(after E refused to supply data on job classification, brackets assigned to jobs, and wages to U president per request by International, his speaking with Ees on plant floor to obtain data, after end of shift, held protected, notwithstanding he violated plant rule by not securing foreman's permission to talk on plant floor)

Professional Job Counselors, Inc. d/b/a Bernard Haldane Associates, Inc. **JD-(SF)-246-80**
(discharge of Ee not violative where, contrary to contention, reason was not Ee's complaints about E's compensation system but was, rather, E's refusal to handle clients according to E's established counselling procedures)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time*, w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

7550-7500 Strike misconduct

Fun Striders, Inc. **250 NLRB No. 087**
(refusal to reinstate strikers who had distributed protected, but nontheless, politically inflamatory materials, violative)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where pickets belligerently prevented E from driving its truck through picket line, E's physical retaliation against pickets not violation of Act)

Triple A Machine Shop, Inc. **JD-(SF)-220-80**
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**
(contrary to Bd, ct held discharge of two Ees under mistaken belief they had engaged in strike misconduct, not unlawful, since Ees had participated in illegal wildcat strike and record evidence does not substantially support conclusion that E condoned or otherwise forgave Ees for their illegal conduct)

7550-8700 Breach of no-strike clause

Irvin H. Whitehouse & Sons Company **252 NLRB No. 140**
(discharge of Ees who refused to work because of safety hazards violative where contract did not contain no-strike provision)

A & R Window Cleaning & Janitorial Services, Inc. **247 NLRB No. 078**
(discharge of Ees who had engaged in work stoppage because of E's announcement that they would not be getting holiday pay for Thanksgiving because they had not been employed by E for 90 days, unlawful, notwithstanding bargaining agreement contained no-strike clause, where at time of work stoppage Ees were unaware of existence of bargaining agreement binding on them)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**
(contrary to Bd, ct held discharge of two Ees under mistaken belief they had engaged in strike misconduct, not unlawful, since Ees had participated in illegal wildcat strike and record evidence does not substantially support conclusion that E condoned or otherwise forgave Ees for their illegal conduct)

7567 VOLUNTARY QUIT

Yellow Freight System, Inc. **247 NLRB No. 028**
(no violation where driver refused or delayed work assignment and his termination -- whether it be deemed a quit or a discharge -- was based on E's legitimate interest in moving freight rather than, as contended, Ee's assertion of a contractual right)

Gar-Wood Detroit Truck Equipment Company **JD-747-79**
(Ee voluntarily quit when he refused job assignment well w/i his capability, stating he was going to punch out, and subsequently punched out, walked off job and premises, notwithstanding he had been informed by E that if he punched he would be considered as quitting his job)

7580 FAILURE TO APPLY FOR REINSTATEMENT

Central Cadillac Company **JD-243-80**
(E's refusal to allow striking Ees to return to work w/o doctor's certificate, unlawful, notwithstanding E's contention that Ees made no valid unconditional offer to return to work, where strikers reported in body to E's premises at regular reporting time, most in work clothes; furthermore, medical certificate requirement instituted night before return and, subsequently, never enforced)

7587 WAIVER OF RIGHT UNDER COLLECTIVE-BARGAINING AGREEMENT

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(U cannot waive Ees' right to strike over issue of medical payments from U fund to insurance carrier by *ad hoc* statements of purported intent of collective bargaining agreement in view of essentially conflicting interests of U and Ees regarding Fund)

Prudential Insurance Company of America **251 NLRB No. 213**
(where contract provision which waived unit Ees right to *Weingarten* representation had been in contract since 19 years prior to that decision and U has consistently taken position that it was not waiving its rights, provision is not waiver of those rights)

518 EMPLOYER DOMINATION, ASSISTANCE OR SUPPORT OF LABOR ORGANIZATION

0100 GENERALLY

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

(vice of dominated labor organization is that E can discourage collective bargaining by holding organization out to his Ees as an instrument for that purpose which they can adhere to w/o incurring his disfavor; in effect the dominated labor organization discourages genuine collective bargaining by giving Ees only semblance of collective bargaining strength while ultimate control is still maintained by E)

0120 EMPLOYER'S OBLIGATION OF NEUTRALITY TOWARDS EMPLOYEE'S ORGANIZATIONAL ACTIVITIES (See also 518-4040-6701-3300)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**

(where E overly restricted U solicitation and distribution and gave encouragement to committee formed under its sponsorship, it violated Act)

2000 FORMS OF DOMINATION AND INTERFERENCE

2001 GENERALLY

South Nassau Communities Hospital **247 NLRB No. 067**

(Act forbids E interference with formation of labor organization whether that interference be *benevolent or malevolent*)

2001-2500 Totality of employer's conduct considered

Hart Ski Mfg. Co., Inc. **JD-11-80**

(domination rather than assistance where Ee committee's formation and continued existence was suggested, encouraged and inspired by management, contract proposals unilaterally prepared by E, committee did not meet or act except when E called meetings, meetings were held on E's premises on paid worktime with supervisors present, E controlled voting by procedure providing ballots, counting votes and providing place for balloting, there were no bylaws and no assets)

2001-3300 Requires active management participation and control

Deister Concentrator Company, Inc. **253 NLRB No. 040**

(where Ees formed shop committee circulated ptn asking for bonus to be reinstated w/o E's knowledge or consent; no attempt to bypass)

2017 EMPLOYER PARTICIPATION IN FORMATION OR INITIATION OF LABOR ORGANIZATION

2017-1400 Initial suggestion or instigation by employer

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**

(where E helped originate Ee committee, aided it, participated in its activities through management and supervisors, exercised control over activities, conducted election, it violated Act)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

Coating Products, Inc. **251 NLRB No. 170**

(telling Ees to establish *Ee committee* and bargaining directly with committee on company time during U campaign violative)

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**

(E who initiated in-plant Ee committee plan, held to have unlawfully dominated and interfered with formation of Ee committee, constituting a labor organization, and contributed financial and other support to it by conducting elections for Ee representatives on committee on working time, and ballots were prepared, distributed, and counted presumably with assistance of *senior Ees* having supervisory status)

South Nassau Communities Hospital **247 NLRB No. 067**

(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

Hart Ski Mfg. Co., Inc. **JD-11-80**

N.L.R.B. v. Metropolitan Alloys Corporation **624 F.2d 743 (C.A. 6, 1980)**

(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

2017-2800 Direct participation of employer

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**

(E who initiated in-plant Ee committee plan, held to have unlawfully dominated and interfered with formation of Ee committee, constituting a labor organization, and contributed financial and other support to it by conducting elections for Ee representatives on committee on working time, and ballots were prepared, distributed, and counted presumably with assistance of *senior Ees* having supervisory status)

2017-5600 Attendance at organizing meetings of employer's supervisors and agents

Hart Ski Mfg. Co., Inc. **JD-11-80**

2017-7000 Assistance with and participation in initial election

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**

(where E helped originate Ee committee, aided it, participated in its activities through management and supervisors, exercised control over activities, conducted election, it violated Act)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(E's establishment of voting eligibility requirement, furnishing of ballots, assistance of supervisor in checking names off voting list and counting ballots indicative of E domination)

N.L.R.B. v. Metropolitan Alloys Corporation **624 F.2d 743 (C.A. 6, 1980)**

(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

2017-8400 Purpose of establishment of labor organization to forestall outside union

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**

(where E helped originate Ee committee, aided it, participated in its activities through management and supervisors, exercised control over activities, conducted election, it violated Act)

N.L.R.B. v. Metropolitan Alloys Corporation **624 F.2d 743 (C.A. 6, 1980)**

(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

2050 TIME OF ORGANIZATION

2050-6700 Concurrent with or immediately after organizational drive of outside union

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**

(where E helped originate Ee committee, aided it, participated in its activities through management and supervisors, exercised control over activities, conducted election, it violated Act)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no

2050-6700—Cont.

attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

2067 STRUCTURE AND BEHAVIOR OF ORGANIZATION

2067-1400 Lack of constitution and bylaws

Hart Ski Mfg. Co., Inc. **JD-11-80**

2067-2800 Dues

2067-2833 No provision for

South Nassau Communities Hospital **247 NLRB No. 067**
(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

Hart Ski Mfg. Co., Inc. **JD-11-80**

2067-3500 Election procedure

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(E who initiated in-plant Ee committee plan, held to have unlawfully dominated and interfered with formation of Ee committee, constituting a labor organization, and contributed financial and other support to it by conducting elections for Ee representatives on committee on working time, and ballots were prepared, distributed, and counted presumably with assistance of *senior Ees* having supervisory status)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's establishment of voting eligibility requirement, furnishing of ballots, assistance of supervisor in checking names off voting list and counting ballots indicative of E domination)

2067-4900 Grievance procedure

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

2067-5600 Inactivity of organization

N.L.R.B. v. Metropolitan Alloys Corporation **624 F.2d 743 (C.A. 6, 1980)**
(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

2083 ADMINISTRATION OF ORGANIZATION

2083-5000 Interference without domination

South Nassau Communities Hospital **247 NLRB No. 067**
(Act forbids E interference with formation of labor organization whether that interference be *benevolent or malevolent*)

2083-6700 Meetings

2083-6750 Called and attended by employer's representatives

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(domination of Ee Committee where E's owner sat behind desk at meetings, initiated topics for discussion, and Ees felt E controlled committee)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(fact Ee committee never met on own initiative, meetings were always held on paid work time on E's property with supervisors present are indicative of domination)

2083-8300 Employer voice in affairs of employee committee

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(domination of Ee Committee where E's owner sat behind desk at meetings, initiated topics for discussion, and Ees felt E controlled committee)

4000 FORMS OF ASSISTANCE AND SUPPORT

4001 GENERALLY

Siro Security Service, Inc. **247 NLRB No. 157**
(*in assessing impact of E assistance to U, totality of circumstances must be considered in determining whether E's conduct was sufficiently pervasive to taint U's majority status. These circumstances include improper conduct of E both before and after recognition and execution of collective bargaining agreement*)

4010 SUGGESTION OF FORMATION OR INITIATION OF UNION

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

South Nassau Communities Hospital **247 NLRB No. 067**
(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

4020 PERMITTING USE OF COMPANY TIME, PREMISES OR FACILITIES

4020-0100 Generally

4020-0133 Contrasting treatment of competing unions

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(E's grant of access to its premises for organizational purposes to favored U while denying access to rival U, violative)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

4020-1700 Dues collection

World Wide Press, Inc. **JD-(SF)-12-80**
(calling Ee at home to solicit payment of assisted U's dues under threat that he should look for employment elsewhere if he did not pay them, unlawful)

4020-5000 Facilities

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

4020-5020 Bulletin boards

World Wide Press, Inc. **JD-(SF)-12-80**
(permitting Ees to post notices calling for payment of assisted U's dues, unlawful)

4020-5060 Clerical, telephone, and other facilities

Signode Corporation **JD-161-80**
(providing free use of clerical assistance and plant equipment to labor organization substantially controlled by and financially dependent on E, unlawful)

4020-6700 Meetings

Child Day Care Center, Verona, Virginia and Baltimore Regional Joint Board, Amalgamated Clothing and Textile Workers Union Health and Welfare Fund **252 NLRB No. 164**
(allowing U to use premises for meetings during which Ees were paid)

Coating Products, Inc. **251 NLRB No. 170**
(telling Ees to establish *Ee committee* and bargaining directly with committee on company time during U campaign violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(fact Ee committee never met on own initiative, meetings were always held on paid work time on E's property with supervisors present are indicative of domination)

4020-8300 Organizational activities

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(violation where E's attorney solicited Ees to sign authorization cards and to enlist support of other Ees for one of two Us conducting organizing campaign; attorney represented and was found to be agent for both favored U and E)

4020-8333 Meetings

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(E's arrangement of meetings at which non-Ee representatives of favored U solicited all Ees, unlawful)

4020-8367 Solicitation

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(E's arrangement of meetings at which non-Ee representatives of favored U solicited all Ees, unlawful)

4020-8367—Cont.

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**

(E's assistance to favored U by soliciting authorization cards on its behalf from its Ees, violative)

Siro Security Service, Inc. **247 NLRB No. 157**

(threatening Ees with discharge for not signing U application and checkoff cards where U did not have majority and prior to 30 days grace period)

Venture Stores, Inc. **JD-81-80**

(E's soliciting its Ees to join U and permitting U to solicit U membership while applicants were seeking employment with E and on E's premises, violative)

4030 FINANCIAL SUPPORT

4030-1400 Checkoff

Siro Security Service, Inc. **247 NLRB No. 157**

(threatening Ees with discharge for not signing U application and checkoff cards where U did not have majority and prior to 30 days grace period)

4030-1408 Deducting union dues without employeee's checkoff authorizations

Edward L. Nezelek, Inc. **252 NLRB No. 070**

(E's deduction of dues w/o Ee's executing checkoff authorization and U's acceptance of dues for nonmembers w/o authorization violative)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**

(violation where E deducted U dues w/o authorization from Ees and paid monies in nature of dues to U on Ees' behalf w/o deducting these sums from their wages or otherwise collecting those monies from authorizated payroll deductions)

Siro Security Service, Inc. **247 NLRB No. 157**

4030-1433 Refusing permission to withdraw authorizations

United States Postal Service **248 NLRB No. 002**

(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

4030-1467 Soliciting dues deduction authorizations

Stroehmann Brothers Company **252 NLRB No. 139**

(telling Ees that they had to join U and ratifying similar statements made by U agents when they distributed membership applications and dues-checkoff authorizations, violative)

Siro Security Service, Inc. **247 NLRB No. 157**

(where minority U)

4030-1485 Honoring dues checkoff authorizations for minority union

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**

Siro Security Service, Inc. **247 NLRB No. 157**

4030-5600 Payment for time spent on union business

Child Day Care Center, Verona, Virginia and Baltimore Regional Joint Board, Amalgamated Clothing and Textile Workers Union Health and Welfare Fund **252 NLRB No. 164**

(allowing U to use premises for meetings during which Ees were paid)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**

(E who initiated in-plant Ee committee plan, held to have unlawfully dominated and interfered with formation of Ee committee, constituting a labor organization, and contributed financial and other support to it by conducting elections for Ee representatives on committee on working time, and ballots were prepared, distributed, and counted presumably with assistance of *senior Ees* having supervisory status)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

(Ees paid for attendance at U meetings)

Signode Corporation **JD-161-80**

(paying representatives of labor organization subject to substantial control by E for hours spent on organization's business, unlawful)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(paying members of Ee committee wages for time spent in bargaining sessions indicative of domination)

4040 RECOGNITION AND EXECUTION OF CONTRACT

4040-0100 Generally

4040-0167 Presumption of majority status at time of execution

Bill's Cabinet Shop **251 NLRB No. 212**

(successor E's signing bargaining agreement with predecessor's U, not violative even if unit Ees had told E that they did not want to *be in the Union,* where E hired the only two Ees in unit when E took over business, and one Ee remained U member and the other an applicant for U membership on critical dates; moreover, contract was signed as normal transaction by U and by E, free of duress or misrepresentation)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

(presumption overcome where credited unrebutted testimony of majority of Ees was that they had never heard of U prior to appearance of U's agent at E's premises demanding that Ees sign checkoff authorization cards)

4040-1700 Premature when number of employees not representative complement

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**

(E's recognition and contracting with favored U at time when U did not represent uncoerced majority of its Ees and E did not employ representative segment of its ultimate Ee compliment, violative)

4040-1733 Expanding unit

Baine Service Systems, Inc. **248 NLRB No. 087**

(U and E by executing contract when both parties knew that size of unit was going to increase violated Act)

4040-2100 Coerced majority representative

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**

(recognition and signing of contract with U which did not have an uncoerced majority, unlawful; E had arranged for U to solicit authorization cards at meeting of its Ees and for E's representatives to witness Ees' signing of the cards)

Siro Security Service, Inc. **247 NLRB No. 157**

(E's recognition by signing contract with security clause with U, unlawful, since it failed to rebut GC's prima facie case of lack of majority and in view of totality of circumstances where recognition was hasty w/o adequate card check, E assisted U in obtaining authorization and checkoff cards by threatening discharge of Ees if they did not sign, and deducted U dues w/o authorization)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-3900 Where bargaining representative is disqualified

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) **250 NLRB No. 065**

(where U retained labor law firm as its counsel and agent in labor and other legal matters, labor law firm's recognizing and bargaining with U as bargaining representative of law firm's Ees, violative, since U is incapable of approaching *the bargaining table with the single-minded purpose of protecting and advancing the interests of the employees who have selected it as their bargaining agent,* Cf. Bauch and Lomb Optical Co., 108 NLRB 1555)

4040-4200 Where another union recognized

The Arundel Corporation **252 NLRB No. 059**

(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had assertedly precipitously recognized another U, not unlawful, where there was no unlawful intent, no logical basis exists for assuming that matter was rigged so as to exclude charging U since only 2 or 3 of 15 Ees would have been represented by it, and there was no contention raised based on Midwest Piping doctrine or on recognition of contracting U before E had representative complement in its employ)

4040-4200—Cont.

Andersen Sand & Gravel Company **JD-655-80**
(E which was engaged in manufacture of prefabricated structual concrete signing contract with Laborers in regard to representation of Ees in new wet concrete operation, unlawful, since E had obligation to bargain with Teamsters where Ees in new operation part of existing unit represented by Teamsters; inasmuch as work was performed in same plant with same tools, basically same wages, under same general supervision and working conditions; nor was operation result of establishment of new division where operation neither physically nor functionally distinct, and E's proposal for new division during bargaining had been withdrawn)

4040-4500 Where employer has valid contract with another union

Argano Electric Corp. **248 NLRB No. 049**
(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held *violative* of *Sections 8(a)(2), (3), (5) and (1) of Act*)

4040-5000 Exclusive recognition of minority representative (see also 512-5084)

Stroehmann Brothers Company **252 NLRB No. 139**
(new owner's recognizing U as representative of shipping Ees who historically were in unit of another U, violative, where U did not represent uncoerced majority of shipping Ees)

Stroehmann Brothers Company **252 NLRB No. 139**
(new owner of business entering into contract and honoring same with U purporting to cover unit of shipping Ees historically represented by another U, violative)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(E's recognition and contracting with favored U at time when U did not represent uncoerced majority of its Ees and E did not employ representative segment of its ultimate Ee compliment, violative)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(violation by E and favored U where E recognized and executed agreement with such U when U did not represent majority of E's Ees)

Venture Stores, Inc. **JD-81-80**

4040-5025 Good-faith belief as to majority status immaterial

Siro Security Service, Inc. **247 NLRB No. 157**

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-5050 Subsequent acquisition of majority status immaterial

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-5088 Where another union certified as representative of unit found appropriate

N.L.R.B. v. Carpenters' District Council of Greater St. Louis, AFL-CIO **622 F.2d 381 (C.A. 8, 1980)**
(violation where E negotiated and antered into separate agreement with its own Ees after stating it would not sign U's new contract negotiated by U with multi-E association from which E had untimely withdrawn)

4040-6700 During existence of real question of representation (midwest piping doctrine, see also 512-5084)

4040-6701 Generally

4040-6701-3300 Employer obligation of neutrality

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Queen City Paving Co., Inc. **JD-(SF)-156-80**

4040-6701-6700 Question of representation for resolution by Board

N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULP charges against E, Bd postponed election until resolution of charges and while charges pending 1 U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts, Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's orders against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

N.L.R.B. v. Newport Div. of Wintex Knitting Mi lls, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULp charges against E, Bd postponed election until resolution of charges and while charges pending (U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts) Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's order against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

4040-6733 What creates real question of representation

4040-6733-3300 Colorable claim of competing union

N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. **610 F.2d 430 (C.A. 6, 1980)**
(where 2 competing U's had filed ULP charges against E, Bd postponed election until resolution of charges and while charges pending 1 U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's orders against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

N.L.R.B. v. Newport Div. of Wintex Knitting Mi lls, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULp charges against E, Bd postponed election until resolution of charges and while charges pending (U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts) Bd's finding that qc existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's order against E finding ULP on basis of such recognition and entering into bargaining agreement will he denied)

4040-6733-6700 Pendency of petition under section 9

Queen City Paving Co., Inc. **JD-(SF)-156-80**
(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec. 8(f) was no defense because of existence of qcr)

4040-7500 During insulated period of contract

4040-7567 With minority union

4040-7567-3300 Where employer does not have knowledge of loss of majority

Clark Equipment Company **249 NLRB No. 094**
(no violation of 8(a)(2) by E or 8(b)(1)(A) by incumbent U where they negotiated and executed new contract when incumbent no longer represented majority of E's Ees, since E lacked requisite knowledge of incumbent U's loss of majority support; dissidents' committee and its leader withheld from E during insulated period the very evidence that would have required E to cease negotiating with incumbent U)

4040-7567-6700 Where employer has knowledge of loss of majority

Campus Housekeeping, Inc. **252 NLRB No. 072**
(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

4040-8300 Extension of contract to additional groups of employees

4040-8325 Where employees are represented by another union

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(treating newly hired electricians as accretion to machinists unit violative as new Ees denied opportunity to choose their bargaining representative)

4050 UNION SECURITY AND PREFERENCE AGREEMENTS

4050-3300 Agreements legal on their face with assisted unions

4050-3325 In contract with favored union

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(incorporation in agreement with illegally assisted U a U-security clause requiring membership in such U as condition of continued employment, unlawful)

4050-3350 In contract with minority union

Siro Security Service, Inc. **247 NLRB No. 157**
(E's recognition by signing contract with security clause with U, unlawful, since it failed to rebut GC's prima facie case of lack of majority and in view of totality of circumstances where recognition was hasty w/o adequate card check, E assisted U in obtaining authorization and checkoff cards by threatening discharge of Ees if they did not sign, and deducted U dues w/o authorization)

Venture Stores, Inc. **JD-81-80**

4050-3375 Union membership requirements

4050-3375-4000 Maintenance of

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

4050-6700 Illegal union security agreements

4050-6750 Failure to provide 30-day period

4050-6750-6700 From execution of agreement

Visu-Craft By H.B.S., Inc. **JD-887-79**
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

4060 PARTICIPATION OF SUPERVISORS IN AFFAIRS OF LABOR ORGANIZATION

4060-0100 Generally

Dravo Corporation and J. D. Posillico Corp. **248 NLRB No. 094**
(in refusing to adopt ALJ's interpretation of Bd's decision in *Nassau and Suffolk Contractors Assoc., Inc.*, 118 NLRB 174, Bd pointed out that *Nassau* does not limit a finding of divided loyalty to the steward-supervisor's membership on U negotiating committee)

4060-1600 Solicitation of union membership and support

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's request that Ee support incumbent U officials in upcoming U election, made half-year before election, and unaccompanied by any kinds of threats or promises held not to violate 8(a)(2) nor 8(a)(1))

4060-1633 With acquiescence of employer

Russ Togs, Inc. **253 NLRB No. 099**
(E's permitting supervisor to serve concurrently as shop steward where responsibilities of these positions were in conflict, unlawful; when two Ees grieved about E's underpayment of contractual wage rates and urged other Ees to grieve and stage protest slowdown about underpayment, supervisor-steward reported grievants' effort to promote a slowdown to E in his capacity as supervisor but did nothing in his capacity as steward about the grievance or E's underpayment)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(violation, where Ees who were reluntant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

4060-5000 Serves as officer, or in other official capacity

Russ Togs, Inc. **253 NLRB No. 099**
(E's permitting supervisor to serve concurrently as shop steward where responsibilities of these positions were in conflict, unlawful; when two Ees grieved about E's underpayment of contractual wage rates and urged other Ees to grieve and stage protest slowdown about underpayment, supervisor-steward reported grievants' effort to promote a slowdown to E in his capacity as supervisor but did nothing in his capacity as steward about the grievance or E's underpayment)

O. B. Williams Company **252 NLRB No. 146**
(E unlawfully interfered in administration of U by permitting supervisor to hold U office and by supervisor's direction of U steward to intercede on behalf of E)

Child Day Care Center, Verona, Virginia and Baltimore Regional Joint Board, Amalgamated Clothing and Textile Workers Union Health and Welfare Fund **252 NLRB No. 164**
(E's recognition of U, unlawful where 1 individual carried dual role as one of E's trustees and as business agent of U)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(E's dealing with supervisor as president of U, unlawful)

4060-6700 Membership on negotiating committee

Dravo Corporation and J. D. Posillico Corp. **248 NLRB No. 094**
(in refusing to adopt ALJ's interpretation of Bd's decision in *Nassau and Suffolk Contractors Assoc., Inc.*, 118 NLRB 174, Bd pointed out that *Nassau* does not limit a finding of divided loyalty to the steward-supervisor's membership on U negotiating committee)

4060-8300 Participation in union meetings

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

4070 DECLARATIONS OF UNION PREFERENCE

4070-5000 Favoring one outside union over others

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

4080 CHANGES IN TERMS OF EMPLOYMENT, OR PROMISES OR THREATS THEREOF, TO ASSIST LABOR ORGANIZATION

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(promise to restore hours of work, previously taken away to punish Ees for support of disfavored U, unlawful where promise was made to gain support for U favored by E)

4080-6200 Promise of benefits

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(promises of overtime work if Ees signed authorization cards of assisted U, unlawful)

4080-6500 Threat that proposed merger will not take place

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E threatening that scheduled merger between it and another company would not take place if E's proposed contract with Ee committee were not ratified or if Ee voted to be represented by outside U, unlawful)

4080-7500 Threats of shutdown

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

4090 DISCRIMINATION IN EMPLOYMENT, OR THREATS THEREOF, TO ASSIST LABOR ORGANIZATION

4090-1400 Discharge, layoff, suspension, or refusal to hire for not supporting favored union

Corrugated Structures, Inc. **252 NLRB No. 079**
(discharge of Ee for complaining to U concerning reduction in pay and discharge of 2 Ees because of their membership in such U, unlawful where such conduct was designed to and tended to encourage membership in favored U and to discourage membership in other U)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(threats of discharge if Ees did not sign authorization cards, of assisted U, unlawful)

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

4090-1400—Cont.

World Wide Press, Inc. **JD-(SF)-12-80**
(calling Ee at home to solicit payment of assisted U's dues under threat that he should look for employment elsewhere if he did not pay them, unlawful)

4090-3700 Discharge or layoff for refusal to sign checkoff authorization

Visu-Craft By H.B.S., Inc. **JD-887-79**
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

4090-9100 Veiled threats

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

6000 STATUS OF SUCCESSOR TO DOMINATED OR ASSISTED LABOR ORGANIZATION

8000 AFFIRMATIVE DEFENSES

8050 COMPLIANCE WITH CONTRACT

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

524 EMPLOYER DISCRIMINATION IN EMPLOYMENT

0100 GENERALLY

0117 SCOPE OF PROSCRIPTION

0117-2500 Act does not touch normal exercise of the right of the employer to select its employees or to discharge them

Classic Truck Rental Corp. **251 NLRB No. 056**
(E's filing of notice of arbitration concerning its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, where E's grounds for discharge were valid; Ee does not insulate himself from discharge for cause simply by virtue of fact that he had engaged in protected activity; misconduct which would justify discharge, absent any protected activity, will also justify discharge despite protected activity)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

0117-6200 Section 8(a)(3) not utilized for implementation or section 10(k) determination

Sullivan Transfer Co. **247 NLRB No. 117**
(where actions of all parties are part of acute, bona fide jurisdictional dispute, E does not violate Sec. 8(a)(3) by choosing one group of Ees over another)

0133 INDIVIDUALS AFFECTED

0133-1200 Innocent bystanders

Hedison Manufacturing Company **249 NLRB No. 096**
(laid off Ees who were not affirmatively shown to be U supporters held discriminated against as if they had been U supporters, where they were caught up in their fellow Ees' U adherence and were victims of E's effort to crush U)

0133-5000 Relative of active union members

Motor Freight Express, Inc. **JD-531-80**
(E's refusal to continue to hire casual employee, brother of active U steward, violative where motivated by relationship to steward)

Ahstabula Forge, A Division of ABS Industries, Inc. **JD-388-80**
(E's discharge of Ee and subsequent refusal to reinstate him because his father was U president, unlawful)

The Royal General Company **JD-17-80**
(discharge of Ee because he was brother of U adherent, unlawful)

0133-6300 Employees anticipating change in status or tenure

Wright Plastic Products, Inc. **247 NLRB No. 101**
(discharge for discriminatory reasons prior to time resignation effective, violative)

0133-7500 Applicants for employment

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(E's conditioning employment on acceptance of wages and conditions of employment substantially inferior to those in expired U contract, unlawful)

Wyman-Gordon Company **252 NLRB No. 168**

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**
(where E refused to rehire millwirght because of his activities as U steward, other millwrights lost work as consequence of E's discrimination and they too were discriminatees; millwrights would have performed work assigned to ironworkers but for E discrimination against steward)

Central Transport, Inc. **247 NLRB No. 198**
(refusal to hire applicant because he previously worked for organized E, violative)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

0133-8700 Supervisory employees

0133-8725 Not protected from discharge because of union membership or activity

Times Herald Printing Company **252 NLRB No. 043**
(discharge of supervisory Ees for engaging in U activities not violative where discharges in no way affected other Ees' rights)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(supervisors discharged for organizational activity not entitled to reinstatement, although it has been ordered where discharge had tendency to interfere with Sec. 7 rights of protected Ees)

0133-8750 Applicant for supervisory position

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

0150 WHAT CONSTITUTES DISCRIMINATION

0150-2500 Differentiation between employees

0150-2575 Discrimination based upon holding union office

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

0150-2587 Discrimination based upon racial or other minority group considerations

Pioneer Natural Gas Company **253 NLRB No. 003**
(discharge of Ee because she insisted that black coworker go to supervisor to complain about racially derogatory remark by another Ee, violative, since her action constituted protected concerted activity)

0150-5000 Change in terms or conditions of employment

General Warehouse Corp. **247 NLRB No. 142**
(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(institution of new restroom use policy in pro-U department requiring Ees to sign out in order to use restroom and providing disciplinary action if Ees signed out more than five times each week, violative, where inference of unlawful motivation was supported by E's knowledge that department was markedly pro-U and E failed to substantiate defense of business justification of improving sagging production)

0150-7500 Lack of change which would otherwise have occurred in terms and conditions

Service Garage, Inc. **247 NLRB No. 115**
(denial of announced wage increase because of Ees' U activities violative; moreover, fact that no past practice existed for granting wage increases immaterial)

0167 REQUIREMENT OF ENCOURAGEMENT OR DISCOURAGEMENT OF UNION MEMBERSHIP

0167-0500 Only Encouragement or Discouragement Resulting From Discrimination Prohibited

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

0167-0500—Cont.

(Bd has burden of proving that discharge was motivated by anti-U animus)

0167-1000 Affirmative Showing of Prohibited Motive Required

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(Bd held Ee was not discriminatorily laid off, where although she had signed U authorization card on second day of employment, there was no evidence that E had any knowledge of her signing such card prior to layoff, at end of second day of work Ee expressed clear lack of desire to perform work she had been assigned, and she failed to appear for work at scheduled time on third day; fact that E offered no explanation for her layoff is not probative of discriminatory motive under the circumstances)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(threshold question where discharge was pursuant to rule prohibiting dissemination of E's strictly private material (classified wage survey data) is whether rule was prohibited by Act; invalid rule cannot support discharge even if E's only motivation in enforcing rule is not anti-U; only if rule is determined to be valid under Act, would Bd assess motive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

0167-1017 Violation where action motivated in part by objective of encouragement or discouragement

Herman Brothers, Inc. **252 NLRB No. 121**
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(where E had cause to fire Ee but did not do so until day after Ee attended U meeting, E violated Act as purpose was to discourage U membership)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

0167-1033 Prohibited motive inferable from conduct Inherently destructive of employee rights

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Henry Vogt Machine Company **251 NLRB No. 040**
(withdrawal of cafeteria privileges after Ees chose U representative found inherently discriminatory since it contained clear and dramatic message for Ees who had chosen representation and for the remaining unrepresented Ees)

Freezer Queen Foods, Inc. **249 NLRB No. 045**
(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it was not possible to achieve its purpose by tolling probationary period during strike, rejected)

Dixie Machine Rebuilders Inc. **248 NLRB No. 116**
(*penalizing Ee because U was actively organizing or was successful in Bd election is inherently distructive of important Ee rights and thus requires no proof of anti-U motivation*)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(enforcing rule that could apply to those not engaging in protected activity as well as to Ee organizers could not be held to be *inherently destructive*)

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(proof of subjective motive can, in limited situations, be made out from conduct itself)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(conduct held inherently destructive where E unilaterally ceased contributing to benefit funds and thus jeopardized U's position as bargaining agent and directly and unambiguously deterred protected activity)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

0167-1033-5000 Notwithstanding conduct motivated by substantial business justification

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Carlson Roofing Co., Inc. v. N.L.R.B. **627 F.2d 77 (C.A. 7, 1980)**
(where E for substantial business justification layed off Ees engaged in protected activity, incumbent on GC to present evidence of antiunion motivation)

N.L.R.B. v. Local 19, Hotel, Motel, Restaurant Employees and Bartenders Union, AFL-CIO **628 F.2d 1357(T) (C.A. 9, 1980)**
(where ALJ's decision to reject E's business justification reason for E's layoff not supported by substantial evidence and record contains no direct evidence of anti-U animous layoff's not violative)

0167-1067 Motive Must be proved where adverse effect of conduct comparatively slight and employer has proved substantial business justification

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Burgess Mining & Construction Corp. **250 NLRB No. 033**
(layoff of Ee, lawful, notwithstanding GC's contention that E laid off Ee because he had filed grievances, where there was no substantial evidence establishing animosity toward grievance procedure and against those who would invoke it and there was no disparate treatment demonstrating unlawful motivation)

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(where impact on protected rights is slight or indirect, or where it may be explained by reference to other lawful considerations, it is prima facie lawful, and an affirmative showing of improper motivation must be made)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

0167-5000 Discrimination must be based on union animus or protected activity

Albertsons, Inc. **252 NLRB NO. 081**
(Section 8(a)(1) discharge of Ee for insisting on break periods provided for in collective-bargaining agreement not violative of Sec. 8(a)(3) where no evidence that discharge was motivated by Ee's U membership or activities in support of U)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(finding of violation in refusal to rehire discharged Ee depends on assessment of E's motives at time of refusal and must be for different reasons than for discharge if discharge occurred outside 10(b) period)

0167-9000 True purpose or real motive is test

Joshua's, Inc. d/b/a Fitzwilly's **253 NLRB No. 082**
(ALJ's finding of violations upheld where GC made showing that E's actions were motivated by anti-U considerations and E failed to demonstrate that it would have taken same action even in absence of its opposition to U as required under *Wright Line* 251 NLRB No. 150 (1980) test)

Herman Brothers, Inc. **252 NLRB No. 121**
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(test of *causation* for cases alleging violations of Section *8(a)(3)* of act found through analysis akin to that of SCt in *Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977)*)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

0167-9000—Cont.

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(Bd is not compelled to accept stated reason for which Ee was discharged when there is reasonable cause to believe ground put forward by E was not true one and real reason was E's dissatisfaction with Ee's U activity)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(E can best show improper motives did not move it to discharge Ee by adducing proof that other Ees were discharged for same reason that Ee was discharged, where there is no suggestion that other Ees were discharged for improper motive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(E's statement to supervisor that he should find out who had been talking about U and get rid of her proof that motivation was illegal and fact that discriminatee was poor Ee irrelevant)

0183 ADEQUACY OF EVIDENCE TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP

0183-3300 Burden of coming forward

0183-3333 Burden of showing discriminatory motive on General Counsel

Russ Togs, Inc. **253 NLRB No. 099**
(GC made *prima facie* case of E's unlawful motivation by showing E's harassment of grievants, E's statement that grievant should have spoken to E rather than other Ees about its underpayment of contractual wages, and E's surveillance of those other Ees going to file wage grievances)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(when E shows legitimate reason for discharge of Ee, burden shifts to GC to prove improper motive moved E to discharge Ee)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

0183-3333-3300 When employer's conduct causes comparatively slight harm to employee rights and E raises defense of business justification

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Carlson Roofing Co., Inc. v. N.L.R.B. **627 F.2d 77 (C.A. 7, 1980)**
(where E for substantial business justification layed off Ees engaged in protected activity, incumbent on GC to present evidence of antiunion motivation)

0183-3333-6700 No burden where employer conduct inherently destructive of employer rights

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discharge of Ee, in and of itself, not normally inherently destructive act which would obviate requirement for showing improper motive)

0183-3367 Prima facie case places burden of coming forward on employer

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

East Wind Enterprises **250 NLRB No. 101**
(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

0183-6700 Sufficiency of evidence

United Broadcasting Company of New Hampshire, INc. d/b/a WMUR--TV **253 NLRB No. 102**
(discharge allegedly for protected activity not unlawful, since GC failed to make *prima facie* showing sufficient to support inference that Ee's protected activity was motivating factor for discharge; only evidence in regard to Ee's protected activity is that he had at one time been employed at unionized operation, and there is no showing of E hostility or animus toward U)

0183-6701 Generally

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

0183-6712 Circumstantial evidence

0183-6712-2500 Direct evidence rarely obtainable and not essential

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(direct evidence of discriminatory motivation is not necessary to support finding of discrimination and such intent may be inferred from record as a whole)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(E's knowledge of Ees' U activities and sympathies may be inferred from circumstantial evidence and may be just as reliable as direct evidence)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(state of mind of E officials who make decision to discharge Ee reflects motive for discharge; GC will rarely be able to produce direct evidence of official's state of mind and therefore GC can only produce circumstantial evidence from which Bd can infer finding of improper motive)

0183-6725 Inference of discrimination

Stewart-Warner Corporation **253 NLRB No. 016**

0183-6725—Cont.

(unlawful motive may be inferred from falsity of stated motive; however, such inference is justified only where motive sought to be concealed by false reasons is unlawful)

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(inference of discriminatory motive warranted where E would not reinstate Ee allegedly because E would no longer get along with Ee after Ee threatened ct action against E and, when considering how valuable Ee was to E, E would not so summarily have allowed Ee to leave had it not been for certain knowledge that E had of his very recent U activities)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(inference of discriminatory motive for Ees' discharges warranted in view of closer scrutiny of Ees' work performance which followed closely in time on advent of Ees' U activities and resulted in sudden and constant criticism of their work, numerous threats of discharge, and close timing of discharges in relationship to Ees' U activities)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(trier of fact may infer motive from total circumstances; if he finds stated motive for discharge is false, he can infer motive is unlawful where surrounding facts tend to reinforce such inference)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

0183-6750 Insignificance of discriminatee in union evidence of lack of prohibited motive

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

0183-6775 Union activities of employee plus discharge or discipline do not alone make out a case of prohibited discrimination

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

0183-6787 While activity no bar to discharge for legitimate reasons, it may disclose union animus when reasons given do not ring true

Dixie Machine Rebuilders Inc. **248 NLRB No. 116**

0183-6789 Lack of employer's specific knowledge of individual employees and differences in union activity between individual employees immaterial

La Habra Dodge, Inc. **251 NLRB No. 001**
(discharge of Ee mechanic at automobile dealer for doing faulty work, not unlawful, where E had no knowledge of Ee's U activities)

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

Wright Plastic Products, Inc. **247 NLRB No. 101**
(discharge of Ees who signed U authorization cards violative and lack of specific evidence of E's knowledge of individual Ees or difference in U activity between individual Ees is immaterial where discharges occurred because of E's desire to frustrate and dissipate Ee support of U)

1700 UNION OR OTHER PROTECTED UNION ACTIVITY OF DISCRIMINATEE

1717 ACTIVE PARTICIPATION IN UNION ACTIVITIES

1717-1000 Officers or leaders in union affairs

Metropolitan Edison Company **252 NLRB No. 147**
(disciplining U officers more severely than other Ees for participating in sympathy strike in violation of no-strike clause, violative)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purposes was to discourage Ee so she would quit)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

N.L.R.B. v. Triangle Sheet Metal Works, Inc. **607 F.2d 998(T) (C.A. 2, 1979)**
(layoff of valuable Ee who was campaign manager for candidate for U president whom E opposed violative notwithstanding economic necessity for layoff since Ee's name not on original layoff list but his name was substituted thereon by president)

1717-1900 Conspicuous in unionizing effort

Wyman-Gordon Company **252 NLRB No. 168**
(discharge of U adherent for failing to notify E that he did not attend classes for which he was subsequently paid, violative, where E's record keeping difficult to understand, Ee offered to return unearned money to E which offer refused and anti-U attitude of E)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

1717-2400 Grievance protest or acting as grievance committeeman

Ford Motor Company **251 NLRB No. 066**
(denial of promotions for Ees to available supervisory positions where they had filed grievance, contemplated further legal action and filed charge with Bd, unlawful)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

1717-3300 Demanding compliance with bargaining contract

Sullivan Transfer Co. **247 NLRB No. 117**
(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

1717-5700 Participation in Board proceeding

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

Don Pizzolato, Inc. **249 NLRB No. 136**
(discharge for participation in conference on representation ptn held at Bd office violative)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

1717-7200 Solicitation

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**

1717-7200—Cont.

(warning Ee for failure to comply with unlawful overly broad no-solicitation rule which was not clarified to permit solicitation during break times and Ee had been soliciting only on his own time, violative)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purposes proscribed by rule were tolerated at plant)

1717-7600 **Strike leadership**

1717-7625 Leadership in spontaneous work stoppage

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**
(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

1717-7650 Non-ULP strike

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(E who told striking Ees that it was firing them, handed out *final paychecks* in middle of pay period and ordered them off premises because they were no longer Ees, violated Act; notwithstanding Ees later met with E, terminated strike and returned to work)

1717-8100 **Refusal to assist company or favored union**

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

1717-9800 **Union stewardship**

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Hammermill Paper Company **252 NLRB No. 172**
(discharge of Ee for participation in unprotected work stoppage solely because of his position as U steward, violative)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**
(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

C. H. Heist Corporation **250 NLRB No. 185**
(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

L. R. Bob *Spillers Painting Co.* **JD-(SF)-169-80**
(discharge of Ee for vigorous pursual of duties as U steward violative)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

1783 KNOWLEDGE OF EMPLOYER AS TO DISCRIMINATEE'S UNION ACTIVITY

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(E held to have knowledge of Ees' protected activity in view of his admissions in affidavit that he discharged Ees after he was told about their picketing and their leaving w/o punching out; moreover, Ees described their activities to supervisor before they were fired, and supervisor knew about discharged Ee's picketing and saw other fellow Ees leave plant together)

1783-0100 **Generally**

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

1783-0150 Employer chargeable with supervisor's knowledge

Magic Mountain Corporation **JD-337-80**
(general manager who discharged Ee charged with knowledge of Ee's U activity where supervisor's knowledge was imputed to general manager and inference was warranted that E knew of Ee's U activity where small work force was generally involved in Ee's U solicitation)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(although E's foreman declared, while a witness, that Ee had conceded some U connection, such declaration was vague as Ee having reported merely that he had called U; upon such limited record, foreman's newly-acquired information's legal imputation to managerial supervisors would not suffice to charge E with knowledge that Ee had become U adherent)

Neckover Trailer Manufacturing Company **JD-256-80**
(under peculiar circumstances of case, knowledge of Ees' U activity not imputed through their supervisors, who themselves were engaged in U activity, for anti-U purposes)

1783-2500 **Effect of absence of**

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

1783-2550 Sustained as defense

Simpson Steel Fabricators & Erectors, Inc. **249 NLRB No. 164**
(layoff not unlawful absent evidence of E's knowledge of U organization activity, where layoff due to sharp drop in orders and Ees who were laid off not qualified to perform available work)

Norym Company, Inc. **JD-847-79**
(discharge of Ees, not unlawful, since for excessive restroom breaks rather than for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

1783-7500 **Inferable**

1783-7533 From circumstances

Franklin Fouts, d/b/a B & F Cartage **251 NLRB No. 068**
(successor E's refusal to employ predecessors Ees who were U adherents, violative; predecessors knowledge of such Ees' U sentiments was imputed to successor where anti-U reasons for predecessor's leaving business was clearly made known to successor)

Reinauer Fuel Transportation Corporation **251 NLRB No. 210**
(knowledge of Ee's U activity was established by fellow Ee's report that all Ees had signed U authorization cards and by E's presence when informer was given card by discriminatee)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

1783-7533—Cont.

(knowledge inferred from relatively small number of Ees involved, occurrence of substantial U activity during working hours, and supervisors' practice of frequently talking to Ees and having coffee breaks with them)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(where E was aware of *unrest* among Ees and that it involved U activity)

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**
(knowledge inferable from unlawful interrogation prior to layoff, post layoff threats of reprisal and plant closure, situs of Ee activities in workplace, small size of work force and shop, and occasional luncheon conversations of E with Ees)

Marcel Schurman Co., Inc. v. N.L.R.B. **620 F.2d 310(T) (C.A. 9, 1980)**
(supervisor's statement to Ee after Ee's discharge, *maybe you (were) fired because you joined the union,* held insufficient basis from which to infer that discharge was in response to Ee's U activities, where supervisor did not participate in decision to discharge Ee and supervisors who decided to terminate Ee did not know of his U activities; supervisor's knowledge cannot, w/o more, be imputed to those supervisors who made decision to discharge Ee)

1783-7567 From smallness of plant

Syracuse Dy-Dee Diaper Service **251 NLRB No. 135**
(discharge of U adherents, violative, where E's knowledge of Ees passing out U cards and holding U meetings was inferred from small size of plant, reasons asserted for discharges were pretextual, and timing of discharges occurred w/i two weeks of organizational campaign)

Bacchus Wine Cooperative, Inc., and Bacchus Wine International **251 NLRB No. 207**
(E's knowledge inferred from small size of Ee complement and E's warehouse with opportunities to overhear Ee conversations in context of antiU animus and ULPs)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(10 to 12 and 4 to 5 Ees employed respectively by each of two Ees constituting single integrated enterprise and/or joint E)

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(fact that Ees attempted to conceal U activity from E does not eliminate weight to be accorded smallness of plant)

K & B Mounting, Inc. **248 NLRB No. 071**
(inference concerning E's knowledge of Ee's U activities, not warranted where, although number of Ees in plant was about 20, Ees involved in organizing campaign attempted to keep their U activities secret even to point of not talking to other Ees whose loyalties were questionable, and there was no evidence that Ee involved herein did otherwise or that supervisory personnel were present during his U activities)

Custom Wood Interiors, Inc. **248 NLRB No. 023**

Florida Cities Water Company **247 NLRB No. 111**

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**

Magic Mountain Corporation **JD-337-80**
(general manager who discharged Ee charged with knowledge of Ee's U activity where supervisor's knowledge was imputed to general manager and inference was warranted that E knew of Ee's U activity where small work force was generally involved in Ee's U solicitation)

P.M.S. West, Inc. **JD-(SF)-47-80**
(small plant doctrine standing alone does not impute knowledge of U activity to E; there must be some direct evidence to support inference)

3300 DISCRIMINATION FOR FILING CHARGES OR GIVING TESTIMONY

3301 GENERALLY

Cartex Corporation **JD-436-80**
(Ee utilization of Bd's remedial processes is protected by Sec. 7 of Act, and there should be as great a freedom to ask Bd for relief as there is to petition any other department of government for redress of grievances; moreover, protection of Act is not limited to only meritorious pleas to Bd)

3301-5000 Scope of proscription

Hi-Craft Clothing Co. **251 NLRB No. 173**
(as to its application to supervisors)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(complainants who *mistakenly* seek to invoke Bd processes considered w/i Sec. 8(a)(4)'s protective reach)

3325 EMPLOYEE ACTIVITY PROTECTED

3325-1400 Filing charges or petition

Interlake, Inc. **253 NLRB No. 076**
(three-day suspension of Ee for leaving plant w/o permission for purpose of filing ULP charge with Bd held violative where E has consistently permitted other Ees to leave work on U business during regular working hours w/o disciplinary action)

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(while finding it unnecessary to pass on 8(a)(4) portion of complaint on basis of which ALJ found that U steward's suspension and discharge violated 8(a)(4); as well as 8(a)(3), Bd found that E interfered with statutorily protected right to file charges and present testimony to Bd by giving unexcused absences to Ees, who gave last minute notice from work, after E learned that they went to Bd's Regional Office)

Salem Transportation Co., Inc. **252 NLRB No. 155**
(allegation of 8(a)(4) based on suspension of Ee dismissed, where such suspension was for poor record and not for filing charge with Bd, as alleged)

Civic Center Cleaning Co., Inc. **252 NLRB No. 110**
(failing to employ Ee because he had filed ULP charges against previous E and U, violative)

Shirt Shed, Inc. **252 NLRB No. 042**
(threat to discipline Ee if she did not withdraw charges filed with Bd by U on her behalf violative)

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Classic Truck Rental Corp. **251 NLRB No. 056**
(suspension of U adherent who had filed charges with Bd, not unlawful, in view of Ee's *stealing time* by wasting time on job and continuing disregard for company rules despite several warnings, thereby prompting E to file notice of intent to arbitrate disciplinary action against Ee because of his inefficiencies as Ee and then suspending Ee after receiving arbitrator's advice to do so)

Classic Truck Rental Corp. **251 NLRB No. 056**
(E's filing of notice of arbitration with regard to its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, since E's action was not prompted by Ee's U activities or filing of charges with Bd, where Ee's misconduct on job and disregard for company rules justified E's action)

Ford Motor Company **251 NLRB No. 066**
(harassment of Ee and reprimand of him in retaliation for filing ULP charge, unlawful)

Ford Motor Company **251 NLRB No. 066**
(denial of promotions for Ees to available supervisory positions where they had filed grievance, contemplated further legal action and filed charge with Bd, unlawful)

Ford Motor Company **251 NLRB No. 066**
(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(refusal to grant Ee one day of leave and warning and suspending him as result of such refusal, unlawful where disciplinary measures were taken by E in retaliation for filing charge with Bd)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(discharge for filing charges with Bd, unlawful)

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against him* held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

3325-1400—Cont.

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(violation where Ee was laid off for registering complaint with Division of Human Resources and for filing deauthorization ptn with Bd)

Medical Mutual of Cleveland, Inc. **248 NLRB No. 074**
(although Ee was legitimately on probation for low production, his discharge was unlawful where termination occurred two days after ULP complaint had issued on Ee's charge and after she refused to assent to E's request for postponement of hearing on her cause)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**
(discharge of U steward for filing charges with the Bd against E, unlawful)

Sonoma Community Press d/b/a News Herald **247 NLRB No. 148**
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(E informing Ee that due to her filing charges with Bd it would not continue to process her grievances under its internal procedures, violative, notwithstanding its subsequent good faith effort to process grievances)

Henry Warshaw and Chester Latra, A Co-Partnership d/b/a Normandie Bar and Grill **JD-551-80**
(violation where E reduced Ee's work schedule because she had filed charge with Bd)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

Hotel & Restaurant Employees and Bartenders Union Local 2 **JD-(SF)-178-80**
(discharge of Ee for advising other Ees of their right to file charges against U, violative)

Magic Mountain Corporation **JD-337-80**
(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(health care institution's denial of full-time positions to doctors because of their filing charges with Bd, unlawful)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(discharge of U steward who filed charges with Bd and other government agencies not unlawful where for violation of his contractual duty as U officer to take steps to terminate work stoppage)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(E's call in system which had previously preferred relatives of its Ees and was later based upon seniority, allegedly because Ee filed charges with Bd against E, changed to merit system, not unlawful, where casuals had no contractual right to be called in to work at all or in any particular priority)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance of which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

3325-2100 Consulting with Board agent

Albany Steel and Brass Corporation **JD-227-80**
(discharge of admittedly *very knowledgeable Ee* assertedly because of his absenteeism and for his job deficiencies held violative where E terminated Ee forty minutes after being notified that Ee intended to seek assistance from Bd concerning his pension dispute with E; discharge was precipitous and in middle of pay period)

3325-2800 Announced intent to file charges

Hi-Craft Clothing Co. **251 NLRB No. 173**
(discharge of supervisor for threatening that he was going to file charges with NLRB because E had not given him promised bonus, violative, as E's action became known to other Ees and coerced them in exercise of their rights; moreover fact that supervisors grievance was not covered under Act immaterial, since it is Bd's function, not E's to decide whether individual is covered by Act or claim has merit)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(refusal to pay benefits to discharged Ee, to whom E promised one-half month's salary as post-termination pay, held violative inasmuch as E treated Ee differently than other discharged Ees because of Ee's expressed intent to seek redress from Bd)

Retail Delivery Service, Inc., and Robert A. Baime, Esq. **JD-486-80**
(discharge of Ee because he told E he intended to complain to and seek aid of U and Bd in his dispute with E, violative)

Shuttle Motor Corporation **JD-327-80**
(discharge of Ee who informed E he had contacted *labor board* after he had made inquiries of state agency regarding legality of *back stubbing*, not unlawful, absent evidence E believed C was to NLRB rather than to state agency or that Ee had filed or was about to file charge with NLRB; further, there was no history of U activity at E)

3325-4200 Giving testimony at Bd or other proceeding

Fundacion Educativa Ana G. Mendez, Inc. d/b/a Colegio Universitario Del Turabo **251 NLRB No. 203**
(no violation, where instructor at university was denied professional tenure, not because of his involvement with U or because he gave testimony under Act and/or participated in Bd proceedings, but because he failed to satisfy reasonable, non-discriminatory university requirements for attaining professional tenure)

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

The Krebs School Foundation, Inc. **251 NLRB No. 187**
(allegation that E violated Act by discharging Ee, in part because she had filed charges and given testimony under Act, dismissed where evidence of unlawful motivation consisted primarily of testimony that E told her that E could have cried when E heard Ees testify with misinformation about E)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's suggestion to Ee, when Ee produced subpoena requiring his presence at Bd hearing, that Ee remember that E had told Ee *to tell the guys to stay at the machines*, held violative of 8(a)(1) but not 8(a)(4), since E thereby restrained and coerced Ee in exercise of protected right and obligation to give testimony under Act)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, from his desired second shift to less desirable day shift held violative where transfer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

3325-4200—Cont.

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E violated 8(a)(1) as well as 8(a)(4) where E, in furtherance of its state civil suit against Ees, obtained alleged discriminatee's deposition concerning matters relating to E's defenses in pending Bd ULP proceeding and inquired of fellow Ee whether supervisor involved in alleged ULPs knew that Ees were trying to organize; since it could reasonably be expected that Ee would, as she did, tell alleged discriminatee of conversation with E, question had its nexus in taking of deposition resulting from filing of state proceeding which was also found unlawful herein)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

Sonoma Community Press d/b/a News Herald **247 NLRB No. 148**
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

3325-4500 Attending Board proceeding

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(disciplinary warnings issued to Ees because they attended Bd hearing held unlawful disparate treatment, where E routinely gave Ees permission to leave plant during working hours to go to ct or to attend to personal business, such permission was never denied, and Ees were not warned or disciplined for requesting such permission or for leaving under such circumstances; Bd found it unnecessary to rely on Earinghouse Imports, 227 NLRB No. 1107)

Permanent Label Corporation **248 NLRB No. 021**

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

3325-7000 Giving statement to Board agent

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Triangle Pacific **JD-(ATL)-22-80**
(discharge, not unlawful where it was not for attempt to give evidence to Bd, as alleged, but for failure to deliver a load and unauthorized hauling of passengers in violation of company rules)

3325-9200 Cooperating with and assisting Board in its proceedings

Don Pizzolato, Inc. **249 NLRB No. 136**
(discharge for participation in conference on representation ptn held at Bd office violative)

3350 FORMS OF DISCRIMINATION (SEE ALSO 524-5000)

3350-3100 Denial of vacation pay

World Wide Press, Inc. **JD-(SF)-12-80**
(refusal to give vacation pay to Ee, witness against E in prior Bd proceeding, unless she agreed in writing to return it in event Bd should determine that there was no valid contract between E and assisted U, unlawful)

3350-5600 Issuance of warning or reprimand

Ford Motor Company **251 NLRB No. 066**
(harassment of Ee and reprimand of him in retaliation for filing ULP charge, unlawful)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(refusal to grant Ee one day of leave and warning and suspending him as result of such refusal, unlawful where disciplinary measures were taken by E in retaliation for filing charge with Bd)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's threat that Ees would be severely punished if they left to attend Bd hearing on U's election ptn, and subsequent issuance of disciplinary warnings to Ees because they attended hearing, unlawful)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(warnings issued during U campaign to known leading U activists and other pro-U Ees, unlawful, where E's reasons for warnings were unpersuasive, warnings were prompted by minor and insignificant matters which would not ordinarily result in discipline and were issued to build record against Ees to support discharge on pretext, and other Ees engaged in similar conduct were not disciplined)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

3350-5800 Threat of reprisal

Shirt Shed, Inc. **252 NLRB No. 042**
(threat to discipline Ee if she did not withdraw charges filed with Bd by U on her behalf violative)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E's threat to bring reprisals against Ee, clearly engaged in protected activities, which included filing of charge with Bd, unlawful)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E's veiled threat to husband of Ee, both of whom picketed E, with respect to losing new home husband had just bought and that E would hate them to *get hurt by all this,* unlawful, where such statements presaged E's later action of filing of civil suit against Ees, and established that true purpose behind law suit was to punish picketers for engaging in protected concerted activity and to prevent them from further asserting such rights)

3350-6000 Layoff

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(violation where Ee was laid off for registering complaint with Division of Human Resources and for filing deauthorization ptn with Bd)

3350-6200 Discharge or threat thereof

Hi-Craft Clothing Co. **251 NLRB No. 173**
(discharge of supervisor for threatening that he was going to file charges with NLRB because E had not given him promised bonus, violative, as E's action became known to other Ees and coerced them in exercise of their rights; moreover fact that supervisors grievance was not covered under Act immaterial, since it is Bd's function, not E's to decide whether individual is covered by Act or claim has merit)

The Krebs School Foundation, Inc. **251 NLRB No. 187**

3350-6200—Cont.

(allegation that E violated Act by discharging Ee, in part because she had filed charges and given testimony under Act, dismissed where evidence of unlawful motivation consisted primarily of testimony that E told her that E could have cried when E heard Ees testify with misinformation about E)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(discharge for filing charges with Bd, unlawful)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

Don Pizzolato, Inc. **249 NLRB No. 136**
(discharge for participation in conference on representation ptn held at Bd office violative)

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

Medical Mutual of Cleveland, Inc. **248 NLRB No. 074**
(although Ee was legitimately on probation for low production, his discharge was unlawful where termination occurred two days after ULP complaint had issued on Ee's charge and after she refused to assent to E's request for postponement of hearing on her cause)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**
(discharge of U steward for filing charges with the Bd against E, unlawful)

Sonoma Community Press d/b/a News Herald **247 NLRB No. 148**
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

Triangle Pacific **JD-(ATL)-22-80**
(discharge, not unlawful where it was not for attempt to give evidence to Bd, as alleged, but for failure to deliver a load and unauthorized hauling of passengers in violation of company rules)

Hotel & Restaurant Employees and Bartenders Union Local 2 **JD-(SF)-178-80**
(discharge of Ee for advising other Ees of their right to file charges against U, violative)

Magic Mountain Corporation **JD-337-80**
(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

3350-6600 Denial of promotion

Fundacion Educativa Ana G. Mendez, Inc. d/b/a Colegio Universitario Del Turabo **251 NLRB No. 203**
(no violation, where instructor at university was denied professional tenure, not because of his involvement with U or because he gave testimony under Act and/or participated in Bd proceedings, but because he failed to satisfy reasonable, non-discriminatory university requirements for attaining professional tenure)

3350-7700 Suspension

Interlake, Inc. **253 NLRB No. 076**
(three-day suspension of Ee for leaving plant w/o permission for purpose of filing ULP charge with Bd held violative where E has consistently permitted other Ees to leave work on U business during regular working hours w/o disciplinary action)

Salem Transportation Co., Inc. **252 NLRB No. 155**
(allegation of 8(a)(4) based on suspension of Ee dismissed, where such suspension was for poor record and not for filing charge with Bd, as alleged)

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Permanent Label Corporation **248 NLRB No. 021**

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance of which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

3350-8500 Filing civil lawsuit

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E's state civil lawsuit against alleged discriminatee, who had filed ULP charge against Ee, and against other Ees, unlawful, where lawsuit was attempt to penalize discriminatee for having filed charges with Bd and other Ees for assisting alleged discriminatee in her protest of ULP committed against her; E's lawsuit placed Ees on notice that by filing charges with Bd or making public a dispute with E, Ee subjects himself to possibility of concomitant expenses and possibility of reimbursement to Ee for legal fees and damages)

3350-8600 Threatening to depose and deposing employee-defendants in civil law suit

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(threatening to, and deposing Ees in state civil proceeding, brought against Ees by E for libel and wrongful interference, regarding Ees' U activities relevant to pending Bd proceeding, unlawful; Bd's stricter discovery procedures pre-empt state's looser standard, federal interest underlying Bd's discovery rule is much greater than that underlying state rule, and danger of interference with Bd's administration of Act by failing to limit state ct discovery procedures is much greate than potential for interference with state proceedings)

3350-8700 Altering conditions of employment

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Ford Motor Company **251 NLRB No. 066**
(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against*

3350-8700—Cont.

him held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

Henry Warshaw and Chester Latra, A Co-Partnership d/b/a Normandie Bar and Grill **JD-551-80**
(violation where E reduced Ee's work schedule because she had filed charge with Bd)

3350-9400 Refusal to employ, reemploye or recall from layoff

Civic Center Cleaning Co., Inc. **252 NLRB No. 110**
(failing to employ Ee because he had filed ULP charges against previous E and U, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(refusal to rehire unlawfully discharged U adherent, unlawful, where he made application for work at plant after discharge, and supervisor made it clear to him that he was not rehired because of his U activities and because ULP charges had been filed on his behalf)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(refusing to hire Ee for hourly paid position where E had decided to eliminate salaried position held by Ee for business reasons and hire only on hourly basis, but had not hired replacement for Ee prior to time Ee had indicated willingness to take hourly paid position, and Ee had had no meaningful opportunity to submit application, unlawful, since refusal really for Ees' filing charges with NLRB)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(health care institution's denial of full-time positions to doctors because of their filing charges with Bd, unlawful)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(E's call in system which had previously preferred relatives of its Ees and was later based upon seniority, allegedly because Ee filed charges with Bd against E, changed to merit system, not unlawful, where casuals had no contractual right to be called in to work at all or in any particular priority)

3350-9700 Surveillance

Ford Motor Company **251 NLRB No. 066**

5000 FORMS OF DISCRIMINATION

5007 EMPLOYMENT REFERENCE

John Grissom, Mikos Doka-Suna, David Springer, and Richard Baker, A General Partnership d/b/a Natural Heating Systems **252 NLRB No. 152**
(denial of reference because Ee was attempting to organize Ees on behalf of one U while E was attempting to work out an arrangement with another U, violative)

5009 REQUIRING PHYSICAL OR PSYCHOLOGICAL EXAMINATIONS

Southern California Gas Company **251 NLRB NO. 127**
(discharge of Ee who refused to see E's doctor violative where no other Ee was ever terminated for such refusal and discharge occurred less than 2 weeks after Ee was threatened with termination for complaining to U about working conditions)

5010 ISSUANCE OF WARNING OR REPRIMAND LETTERS

Pioneer Natural Gas Company **253 NLRB No. 003**
(issuing written reprimands because of U activities, violative)

Reeves Rubber, Inc. **252 NLRB No. 026**
(issuance of warning notice threatening termination for pro-U solicitation in work area on work time while permitting anti-U solicitation under same circumstances, unlawful)

Alfa Leisure, Inc. **251 NLRB No. 088**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E giving Ee written warning and 3 day suspension in reprisal for his leading role in U organizational campaign, unlawful; E's contention that Ee produced less than other department Ees was pretext for warning and suspension)

United States Postal Service **251 NLRB No. 033**
(issuance of written warnings for alleged insubordinate conduct during and after informal grievance meeting, violative, where conduct was not *opprobious* or *extreme* and Ees' continued discussion of grievance following meeting was part of *res gestae* of grievance meeting which had no consequential disruptive effect since Ees did return to work in response to direct order)

Bechtel Incorporated **248 NLRB No. 158**
(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(giving Ee reprimands and subsequent suspension for allegedly abusing restroom policy unilaterally instituted, violative)

U. S. Postal Service **JD-(SF)-242-80**
(supervisor held not to have threatened to retaliate against Ee because of U steward's insistence on investigating incident involving supervisor and Ee, or to have retaliated against attempts of U steward to investigate incident by issuing Ee a letter of warning, where Ee engaged in conduct which E reasonably viewed as insubordinate and supervisor immediately reported incident to his superiors at which time decision was made to discipline Ee, and such decision was reached several hours prior to steward's arrival at the scene)

Arvin Industries, Inc. **JD-381-80**
(issuance of written reprimands to Ees who attended U council meeting to discuss coordinated bargaining and to other Ees who attended U financial school after E had refused their request to be absent w/o pay violative, notwithstanding E's claim that such leave was not included in contractual leave provisions, since motivating reason for denying request was E's opposition to principle of coordinated bargaining; E had routinely granted leave for Ees to attend variety of U-related matters, and denying leave for Ees to attend financial school was to *shore up a defense*)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

Coors Container'Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(reprimding Ee for engaging in protected activity of displaying sign urging boycott of E's product, unlawful; E's claim that *verbal warning* given Ee was not a *written reprimand* under its discipline and discharge policy, rejected)

5012 REFUSAL TO EMPLOY OR REEMPLOY

5012-3000 After discharge, layoff, or suspension

Stafford Construction Co. **250 NLRB No. 128**
(refusal to reemploy U adherent because of his U activities violative)

B. N. Beard Company **248 NLRB No. 016**
(alleged breach of agreement to reinstate lawfully discharged Ee, not unlawful, where E's representative involved did not have either actual or apparent authority to bind E to such statement, and U also doubted representative's authority)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(refusal to rehire unlawfully discharged U adherents, unlawful, where numerous terminated Ees were rehired, there were numerous job vacancies and new hires during period in question, and E had no policy of automatically refusing to rehire discharged Ees)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(although striking Ees who were terminated before effective date of health care amendments and were not entitled to reinstatement as returning Ees with right of restoration of seniority and other rights and privileges arising from former relationship, ct held that E discriminated against such Ees, who had made application for new employment with E after effective date of health care amendments, by refusing to hire the former Ees because of their prior concerted U activity)

5012-3500 After leave of absence

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(refusal to reinstate U adherent at conclusion of ULP strike after she had been on leave due to illness and hospitalization violative, where E was aware of Ee's participation in strike, and untimeliness of Ee's notification to E of her continued interest in job as E's reason for failure to reinstate was pretextual)

5012-3800 After filing of grievance

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**
(refusal to consider reemployment for Ee discharged at U's request for nonpayment of dues violative where E acted in retaliation for grievances Ee had filed before her discharge)

Albertson's Inc. **JD-(SF)-104-80**
(no violation, where E would have faced problems trying at another store to hire Ee who had filed grievance, because of E's full work force)

5012-3900 After voluntary quit

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

Tartan Marine Company **247 NLRB No. 073**
(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

5012-4000 Discriminatory hiring practice (See also Union Security Requirements 524-5090)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E's refusal to hire individual, unlawful, since rejection based on fact he was U apprentice that U's business agent had requested E hire; contention that E did not discriminate because 10 days later he hired another Ee with same name, rejected, in view of E questioning latter individual before hiring and ascertaining he was not U member is evidence that E knew hired Ee was not same individual business agent requested)

Central Transport, Inc. **247 NLRB No. 198**
(refusal to hire applicant because he previously worked for organized E, violative)

Galax Apparel Corporation **247 NLRB No. 026**
(refusal to rehire Ees, violative, where E was prepared to rehire Ees as its records indicated, but retracted employment offer after receipt of U telegram informing E of organizing campaign and that members of Ees' family were part of U organizing committee)

5012-5000 To avoid bargaining obligation

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(winning contractor's refusal to hire losing contractor's Ees who are members of one U and constitute separate bargaining unit from E's other Ees because they refused to join U representing extant unit violative)

G and M Lath and Plaster Co., Inc. and Its Aler Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(corporation and its alter ego's refusal to retain Ees on project doing plaster work, violative where president of corporation decided to make project non-U after corporation left completion of project, because of financial problems, to alter ego under supervision of corporate president)

5012-7000 Because of known union activities

Wyman-Gordon Company **252 NLRB No. 168**

Franklin Fouts, d/b/a B & F Cartage **251 NLRB No. 068**
(successor E's refusal to employ predecessors Ees who were U adherents, violative; predecessors knowledge of such Ees' U sentiments was imputed to successor where anti-U reasons for predecessor's leaving business was clearly made known to successor)

Cedar Coal Company **251 NLRB No. 081**
(refusal to rehire former Ee who had been militant U supporter, violative, where refusal based on E's fear that E would cause *trouble* for it)

Stafford Construction Co. **250 NLRB No. 128**

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

Tartan Marine Company **247 NLRB No. 073**
(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

Avon Mirror & Distributing Co. **247 NLRB No. 033**
(E who refused to hire former U organizer because of his background violated Act)

Traylor Bros., Inc. **-(SF)-274-80**
(failure to hire applicant not violative where it was not, as contended, because of his membership in or support of U, but rather because of his proclivity for starting fights with his fellow workers)

Elco Electric, Inc. **JD-520-80**
(violation where E refused to hire applicant because of his filing grievance alleging U contract infraction by E on prior job rather than, as contended, because of his tardiness or poor productivity during prior employment with E)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

Beech Aircraft Corporation **JD-813-79**
(no violation where E refused to hire applicant not because, as contended, she had joined strike against previous E but because of her adverse medical history)

Reed Equipment, Inc. **JD-816-79**
(no violation where E refused to hire 15 applicants not because, as asserted, it was impelled by knowledge that they were members of U and it's desire to avoid dealing with such U, but rather because none met E's established qualifications or standards)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(finding of violation in refusal to rehire discharged Ee depends on assessment of E's motives at time of refusal and must be for different reasons than for discharge if discharge occurred outside 10(b) period)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(although striking Ees who were terminated before effective date of health care amendments and were not entitled to reinstatement as returning Ees with right of restoration of seniority and other rights and privileges arising from former relationship, ct held that E discriminated against such Ees, who had made application for new employment with E after effective date of health care amendments, by refusing to hire the former Ees because of their prior concerted U activity)

N.L.R.B. v. Pfizer, Inc. **629 F.2d 1272 (C.A. 7, 1980)**
(E's refusal to hire laborer for vacant position where reference check disclosed former E found him to be trouble maker, mentioned his U activities and stated would not rehire Ee not violative where evidence to support finding of E's U animous based on inferences and not supported by substantial evidence)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(when plant director offered two U members jobs shortly after interview and subsequently, upon discovering that they were U members, informed them that he would not know whether he could hire them but would contact them that evening after he had discussed their application with chief engineer, plant director's failure to call U members thereafter regarding employment at E, violative)

5012-7050 Of relatives

Motor Freight Express, Inc. **JD-531-80**
(E's refusal to continue to hire casual employee, brother of active U steward, violative where motivated by relationship to steward)

5012-7600 Refusal to hire predecessor's employees

Vantage Petroleum Corp. **247 NLRB No. 202**
(where E obtained state contract to operate gas stations previously managed by two companies and decided, before being approached by station attendants then working at the gas stations, that it would hire its own Ees complements rather than Ees then working at gas stations and that it would pay Ees according to its own wage structure starting from minimum wage, E's subsequent failure to hire former Ees of its predecessor gas companies who were represented by U, not violative, since E was not successor E to any of the gas companies and its actions did not result from U animus)

5012-7700 Refusal to hire because of union opposition

Central Transport, Inc. **253 NLRB No. 130**
(no unlawful constructive refusal to hire where E's vice-president stated to applicant who had been involved in intra-U rivalry that if after applicant was hired U requested applicant's discharge E's owner would direct vice-president to discharge applicant since vice-president did not intend to cause applicant to cease seeking employment but was merely speaking realistically and was trying to help applicant solve problem with U)

5012-8000 Use of application form requiring disclosure of union membership

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**

5012-8000—Cont.

(where employment agency used application forms containing questions about applicant's U activities, E violated Act when it took no action to alleviate impression these forms made on applicants)

5017 Imposition of illegal conditions of employment (See also 524-5090)

5017-2800 Abandonment of union activities or membership

Stafford Construction Co. **250 NLRB No. 128**

5017-3500 Prematurely recognized union

Baine Service Systems, Inc. **248 NLRB No. 087**
(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

5017-4200 Requiring union membership in favored organization

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(winning contractor's refusal to hire losing contractor's Ees who are members of one U and constitute separate bargaining unit from E's other Ees because they refused to join U representing extant unit violative)

5017-4500 Acceptance of wages and conditions of employment less than those provided for in contract

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(E's conditioning employment on acceptance of wages and conditions of employment substantially inferior to those in expired U contract, unlawful)

5020 HARASSMENT OF UNION ADHERENTS

5020-3300 By employees

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of U committeemen because other Ees would not work with them, violative)

5023 IMPOSITION OF DISCRIMINATORY WORKING CONDITIONS

5023-1200 Less desirable job or work shifts

Republic Die and Tool Company **252 NLRB No. 092**
(assigning U adherent to spotting press work, admittedly the most undesirable work of diemaker, violative)

Maywood, Inc. **251 NLRB No. 139**
(E's assigning Ee to full-time duty on chopsaw and preventing him from performing leadperson function's because of his U activities and sympathies, violative)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purposes was to discourage Ee so she would quit)

Cable Vision, Inc. **249 NLRB No. 062**
(assignment to stand-by position of known U activist hired as installer with understanding that as installer he would not have to work standby position held unlawful as discriminatory assignment and constructive discharge where E knew that assignment would interfere with Ee's outside work and E quit as result

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

General Warehouse Corp. **247 NLRB No. 142**
(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

General Meats, Inc. **247 NLRB No. 153**
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

Penz Tool and Manufacturing Co., Inc. **JD-644-80**
(transfer of U adherent to less desirable job, not unlawful where transfer was based upon economic considerations and attempt to cut back in areas of employment where possible)

Grandee Peer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(removal of U adherent from driving assignment after U representatives communicated desire for recognition held violative where timing and circumstances supported finding that action was retribution for Ees U activities)

5023-1900 Closer supervision

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

General Meats, Inc. **247 NLRB No. 153**
(having special sign-in-out sheet whenever Ee left for nonwork purposes)

5023-3300 More onerous conditions

Omark-RCBS, A Division of Omark Industries **252 NLRB No. 089**

Maywood, Inc. **251 NLRB No. 139**
(violation where supervisor prohibited Ees of certain department from using restrooms between breaks w/o prior permission or doctor's certificate, and from smoking in their cars with windows rolled down, because of known U activities of large majority department)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

Sherwood-Trimble Medical Building **247 NLRB No. 160**
(requiring U adherent to take breaks only at scheduled time, to record what she did in short segments, and restricting U adherent to her desk and extending restriction to others to disguise motivation, unlawful)

Wilson Foods Corporation **JD-(SF)-292-80**
(directing pump operator to squeegee out railroad tank cars allegedly for his refusal to withdraw several grievances, not unlawful, where evidence showed that it was standard requirement for Ees working as pump operators to use squeegees if vacuum pump did not completely empty car of its contents)

5029 ACTIONS AFFECTING EMPLOYMENT CONDITIONS

5029-0100 Generally

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(unilateral changes in wages, terms, benefits and condition of employment, unlawful because of E's desire to go *non-union* and its discrimination against those seeking and those obtaining employment thereafter)

5029-1200 Renumeration and benefits

5029-1211 change in pay day or hour

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

5029-1225 Delay or denial of increase

Eastern Maine Medical Center **253 NLRB No. 024**
(withholding of annual general wage increase from unit Ees during bargaining with U, unlawful, where E's official testified that w/o presence of U E would have granted increases, practice of granting increases was sufficiently established so as to constitute condition of employment, E never specifically proposed withheld increases as a bargaining proposal, E's conduct precluded unit Ees from ever recouping through bargaining by U losses E had imposed on them for selecting it, and E's motive was to discourage U activities as evidenced by its anti-U hostility)

Eastern Maine Medical Center **253 NLRB No. 024**
(fact that E withheld wage increases from unit Ees during bargaining negotiations with U on advice of counsel held insignificant in determining that E's conduct was unlawful)

Republic Die and Tool Company **252 NLRB No. 092**
(establishment of hourly wage rate at contractual minimum when U adherent became a journeyman, violative)

Republic Die and Tool Company **252 NLRB No. 092**
(refusal to grant U adherent general wage adjustment, violative)

United Services For The Handicapped **251 NLRB No. 117**

Northern Telecom, Inc. **250 NLRB No. 085**
(denial of merit increase)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

5029-1225—Cont.

Olympic Medical Corporation **250 NLRB No. 011**
(withholding periodic as well as retroactive wage increase, for purpose of inducing Ees to vote against U, violative)

Olympic Medical Corporation **250 NLRB No. 011**
(withholding wage increase and instituting change in wage policies retroactively, violative in view of absence of business justification and presence of other ULP)

Conagra, Inc. **248 NLRB No. 085**
(failure to grant wage increase during U campaign, not unlawful, where due to failure of personnel manager to make wage survey; notwithstanding statements of E that denial of increase was due to U campaign)

Service Garage, Inc. **247 NLRB No. 115**
(denial of announced wage increase because of Ees' U activities violative; moreover, fact that no past practice existed for granting wage increases immaterial)

Tartan Marine Company **247 NLRB No. 073**
(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

Chipmore Manufacturing Co., Inc. **JD-432-80**
(violation where wage increase was rescinded because of U campaign)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(statement that because of U's organization campaign, including ptn for election, E could not at that time grant wage increase requested by Ee, not unlawful where no wage increase had been promised or scheduled at time statement was made)

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

South Shore Hospital v. N.L.R.B. **630 F.2d 40 (C.A. 1, 1980)**
(E's refusal to make proposed wage increases for represented Ees in its final offer retroactive so as to equal wage increases already granted its unrepresented Ees, unlawful where its stated business reasons that it would be disadvantageous for it to do so resulted from its own unlawful bargaining strategy)

The Catholic Medical Center of Brooklyn and
Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(E's 3-week suspension of salary review w/o consulting with U, unlawful and though inconsequential, it was distinguishable from violations where Bd applied *de minimis* doctrine)

5029-1226 Evaluation of work

Joshua's, Inc. d/b/a Fitzwilly's **253 NLRB No. 082**
(implementation of Ee evaluation system to be used in granting raises not violative despite E's other anti-U activities where, though plan did not cover entire work force, no evidence application based on illegal motive)

5029-1231 Granting of wage increase

Delta Faucet Company, a Division of Masco
Corporation of Indiana **251 NLRB No. 071**
(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected, where U activity was taking place at only small part of E's enterprises)

Farmingdale Iron Works, Inc., and Jerry Cardullo
Iron Works, Inc. **249 NLRB No. 003**
(payment to Ees at higher wage rate than rate negotiated, unlawful)

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

5029-1237 Denial of termination benefits

Clark & Hinojosa, Attorneys at Law, A Professional
Corporation **247 NLRB No. 089**
(refusal to pay benefits to discharged Ee, to whom E promised one-half month's salary as post-termination pay, held violative inasmuch as E treated Ee differently than other discharged Ees because of Ee's expressed intent to seek redress from Bd)

5029-1259 Discriminatory maintenance of contract clause

Classic Truck Rental Corp. **251 NLRB No. 056**
(refusal by E and U to permit drivers' helpers to become U members or to apply to them terms and conditions contained in drivers' contract, not unlawful, where U did not represent helpers or anyone else described in contract's boiler-plate preamble, helpers were outside unit and therefore U had no obligation to represent them nor any obligation to insist that E extend contract provisions to them; similarly, E had no obligation to extend contract's wage scale or other benefits to helpers or any other Ees outside unit)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(refusal to pay nonU Ees contractual wage and accord them contractual benefits to which they were entitled as members of bargaining unit covered by contract, unlawful)

5029-1275 Reduction

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that E's treatment of new non-U Ees hired to replace strikers who had refused E's offer of reinstatement was neither discriminatory nor anti-U, where E applied to new Ees wage provisions of existing contract; E's failure to reduce their wages, while having U agree to reduction in wages because of E's precarious financial situation, was justified by fact that exclusion of new Ees from contract's fringe benefits gave strikers compensation at higher rate than new Ees when hourly fringe benefits rates are combined with hourly contract rates)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(notwithstanding Ees subsequent unlawful discharge, E's action of reclassifying Ee at lesser salary not unlawful absent evidence of discriminatory motivation and connection between wage reduction and Ee's U activities)

International Business Systems, Inc. **247 NLRB No. 102**
(violation where E reduced Christmas bonus by half because of Ees' U activity and not because available cash was insufficient, as asserted)

5029-1279 Denial of holiday pay

Lyman Steel Company **249 NLRB No. 040**
(withholding holiday pay from U adherent who had switched his allegiance from favored U to petitioner held violative where E had threatened Ee with punishment for supporting petitioner)

5029-1280 Denial of overtime pay

Redman Construction Company, Inc. **JD-(SF)-105-80**
(discharge of Ee who sought to implement contractual benefits regarding overtime pay violative irrespective of whether asserted claims are found meritorious)

5029-1283 Denial of vacation Pay

Ace Beverage Company, et al. **253 NLRB No. 124**
(denial to reinstated economic strikers of pro rata vacation benefits for time worked prior to strike, not unlawful, where strikers were absent, by reason of strike, for more than 7 weeks during calendar year and had not worked 45 weeks necessary for accruing benefits as required by contract, nor were strikers eligible under contract's pro rata benefits provision which was limited to Ees who quit, retired, or surrendered their seniority; to find violation herein would give U through ULP proceeding what it sought, but could not achieve, through good faith negotiations)

Ace Beverage Company, et al. **253 NLRB No. 124**
(contention that since contract did not expressly deny pro rata vacation benefits to strikers, Es could not lawfully deny such benefits to reinstated strikers while granting benefits to other Ees eligible under contract, and thereby E, in effect, penalized strikers, rejected, where contract provided for narrow pro rata exceptions for Ees who quit or retired, and U acquiesced in such result after failing during negotiations to prevail in its demand for pro rata benefits for all Ees)

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

World Wide Press, Inc. **JD-(SF)-12-80**
(refusal to give vacation pay to Ee, witness against E in prior Bd proceeding, unless she agreed in writing to return it in event Bd should determine that there was no valid contract between E and assisted U, unlawful)

5029-1287 Change in basis of payment

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

5029-2500 Hours

5029-2525 Change in work schedule

St. John Medical Center **252 NLRB No. 077**
(change in work schedule which became permanent after Ee became leading U adherent, not unlawful where her change in schedule was economically justified)

Marriott In-Flight Services a Division of Marriott
Corporation **249 NLRB No. 072**
(requiring Ee believed to be U leader to return directly after lunch to airfield where he had no duties between 1:30 and 4:30 rather than to work in flight kitchen violative, since change in schedule was designed to keep him from having contact with Ees in flight kitchen)

Earl Kuhns d/b/a Frenchy's K & T and Earl's
News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times

5029-2525—Cont.

when they could not use public transportation, added onerous janitorial duties and then discharged them)

Retailer's Coupon Redemption Co., Inc. **JD-194-80**

(violation where E discontinued flexible work hours of U leaders, and sympathizers, while permitting other Ees to continue working flexible hours)

Southwest Research Institute **JD-(SF)-276-79**

(discontinuation of practice of accommodating work schedules of U adherents to their school schedules in accordance with its educational advancement program, unlawful)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

(E acceding to U's termination of temporary shift assignment, not unlawful, notwithstanding termination violative of 8(b)(1)(A) and 8(b)(2) where E's action was not based on discriminatory motive, but rather on business justification of fear of legal or economic action; further, E did not know U had breached duty of fair R)

5029-2550 Reduction

Berger Transfer and Storage, Inc. **253 NLRB No. 002**

(E violated Act where rehired striker changed from guaranteed 40 hours week and placed on seniority list which caused him to work less than 40 hours)

Century Moving & Storage, Inc. **251 NLRB No. 083**

(reducing work of two U adherents assertedly because of business decline held violative where E effectuated his prediction that if he were compelled to accede to U economic demands he would be compelled to assign work to himself and another Ee and thus reduce work of least senior Ees)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**

(exclusion of strikers from overtime work, unlawful)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

(reduction of hours to punish Ees for known support of one of two Us conducting organizing campaign where E favored and supported rival U, unlawful)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**

(where E reduced hours of 3 Ees out of work force of 25 for discriminatory reasons, this does not support finding that E reduced hours of all Ees; moreover, violations as to 3 Ees remedied by separate allegation in complaint)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

(reduction of hours of leading U advocate, part time Ee with good employment record, in order to give less senior Ee *a few hours* held violative where E's action against seniority was contrary to its usual practice and was taken against Ee to *straighten him up*)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**

(reducing hours immediately following U bargaining demand and *until the union matter cleared up*, violative, since the changes were instituted in response to Ees' U activity)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**

(reduction in two Ees' scheduled hours for U activities and for appearing in U's behalf at hearing, respectively, unlawful; fact one Ee increased hours actually worked by own efforts, no defense)

Wilson Foods Corporation **JD-(SF)-292-80**

(changing starting time for Ee for allegedly refusing to withdraw several grievances, not unlawful, where grievant was not only Ee put on later starting time and change in mode of delivery of product from use of railroad to use of trucks made it unnecessary for Ee to report to work early; no evidence cast doubt of E's decision to effect small financial saving by cutting hour off combined shifts of Ees involved)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**

(violation, where E changed work schedule and reduced work hours of U activist)

5029-3700 **Bonuses**

5029-3733 Discrimination in regard to

Deister Concentrator Company, Inc. **253 NLRB No. 040**

(failure to grant accrued bonus to unrecalled economic strikers violative)

Florida Steel Corporation **249 NLRB No. 018**

(E's denying accumulation of *time bank* credits to Ees who served on U negotiating committee for time they spent in negotiations which were held during working hours not violative, where attendance at bargaining negotiations did not fall w/i exceptions set forth to E's requirements that Ees were required to be present for all regularly scheduled hours during workweek in order to accrue time bank credit, absence to participate in bargaining was voluntary since E offered to meet outside working hours, and there was contention of discriminatory motivation in denial of credit)

5029-3767 Withholding of

Woonsocket Spinning Company **252 NLRB No. 163**

(deprivation of Christmas bonus where E announced it intended to give one, granting bonus to salaried Ees, refusing to inform U basis on which bonus computed for salaried Ees and threats that Ees had lost bonus because they supported U violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

(violation where E discontinued Ee bonus payments and thereafter refused to pay Ees the bonus which had accrued prior to discontinuation in reprisal for Ees' voting for U)

5029-4300 **Vacation pay, policy or practice**

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

(to Ee entitled to reinstatement where, but for E's unlawful refusal to reinstate her, she would have been eligible to receive here vacation pay)

Larsen Supply Co., Inc. **251 NLRB No. 175**

(withdrawing advance vacation privileges)

General Time Corporation, Westclox Military Products Division **249 NLRB No. 178**

(E's failure to pay accrued vacation pay to striking Ees violative where no business justification existed)

Borden, Inc., Borden Chemical Division **248 NLRB No. 060**

(on ct remand, Bd held E's rejection of U's request at outset of strike to pay accrued vacation benefits to qualified Ees, unlawful; E showed its motive by stating that it would not pay vacation pay to strikers, and evidence of past practice indicated that purpose of contractual limitations on vacation pay were for purpose of assuring that time off was taken instead of being foregone for extra pay)

Vesuvius Crucible Company **252 NLRB No. 179**

(refusal to pay economic strikers vacation pay accrued under expired contract, violative, fact contract limited vacation pay, computed on prior year's earnings, to its term did not free E from responsibility of paying these vacation benefits because they vested in Ees during term of contract and do not divest on expiration)

5029-4500 **Withdrawal of privileges**

Larsen Supply Co., Inc. **251 NLRB No. 175**

(E violated Act where prior to election which U won, Ees were allowed to take their lunch breaks whenevers it was convienent but afterwards required them to take it at specified time in rataliation for U vote and w/o E bargaining with U)

Henry Vogt Machine Company **251 NLRB No. 040**

(withdrawal of cafeteria privileges after Ees chose U representative found inherently discriminatory since it contained clear and dramatic message for Ees who had chosen representation and for the remaining unrepresented Ees)

Hall of Mississippi, Inc. **249 NLRB No. 119**

(singling out 2 members of U organizing committee for admonition against using telephone for personal business, violative where there was no evidence to show that any problem existed which warranted issuance of warning)

5029-5000 **Change in business methods or operations**

5029-5037 Transfer of unit work

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. 098**

(refusal to transfer unit Ees to new location, not violative, since change in original bargaining unit was so fundamental and diverse that new location was not integral part of existing unit at original location)

St. Regis Paper Company **247 NLRB No. 105**

(transferring work from one of E's plants to another of E's plants in another city to eliminate overtime, subject of an Ees' grievance, held violative, since grievance was protected activity)

J. H. Block & Co., Inc. **247 NLRB No. 041**

(transfer of work from group of U adherents violative when done in retaliation for their U activities; fact that group, to whom work was transferred, was also active in U does not preclude finding)

5029-5050 Subcontracting

Behring International, Inc. **252 NLRB No. 055**

(E unlawfully laid off its warehouse Ees and subcontracted its warehouse work where E's actions occurred shortly after unlawful threats and grants of benefits in response to U organizing campaign; Ees had been praised recently for quality of their work; Ees who attempted to forestall election were retained at higher rates of pay following subcontracting, while Ees who had not opposed U were laid off; and E can point to no contemporaneous event which might have motivated layoffs)

5029-5050—Cont.

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(unionized corporation's layoff of its Ees and subcontracting of their work to its nonU *alter ego* sole proprietorship, unlawful)

Carbonex Coal Company **248 NLRB No. 107**
(E's subcontracting of 100 percent of its hauling operation which resulted in layoff of 2 Ees, violative)

C-F Air Freight, Inc. **247 NLRB No. 60**
(closing of facility and subcontracting of Ee's work, unlawful, where E's defense that financial losses at facility necessitated such action, unlawful; it was fallacious to say, on one hand, that facility was such an economic disaster as to require its closing and, on the other hand, to subcontract its work; subcontractor did not prevent E from suffering financial losses; there was no dinimution of work after subcontractor began performing it; and subcontractor's work force was substantially the same)

Atlan Inc. **JD-890-79**
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5029-5075 Partial closing of business

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(E's sale of 2 of its 30 trucks 3 months after strike which had no effect on Ee's job did not violate Act)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(E's closing of part of business rather than deal with U and reopening department with new Ees violative at time of reopening as ct treated closing of 1 of 2 departments as temporary shutdown of total operation since closing of department not doneto dampen unionism in other department)

5029-5087 Reorganization of work system

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

Suburban Ford, Inc. **248 NLRB No. 051**
(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(posting notices, immediately following U bargaining demand, that Ee drivers were not to punch in until their trucks were full loaded, and, upon returning from a run, were forbidden from punching in until their trucks had been re-loaded, violative; radical change in past practice was announced in response to Ees' U activity)

5029-6200 **Discontinuance of employee benefits**

5029-6213 Use of subsidized cafeteria

Henry Vogt Machine Company **251 NLRB No. 040**
(abrupt unilateral withdrawal of privilege of using E-subsidized cafeteria after Ees chose U representation, unlawful)

5029-6241 Paid meal period

Cardinal Heating and Cooling, Inc. **JD-835-79**
(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

5029-6272 Company transportation and/or parking space

Penz Tool and Manufacturing Co., Inc. **JD-644-80**
(removal of reserved parking space from U adherent, unlawful, in view of E's knowledge of Ee's U activities and E's hostility toward Ee exercise of protected rights after the filing of ULP charges against E)

5029-6287 Disadvantageous change in conditions connected with job

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(supevisor's change in attitude toward Ee after latter became known as U adherent, resulting in Ee's loss of overtime work and less remunerative work during his regular shift, unlawful)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(assignment of Ee to department where she was alone with no work, violative, where assignment was motivated by Ee's U activities and in order to isolate her from other Ees)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(assignment of U adherents to take inventory in isolated room, violative, where E's motive was to isolate U supporters from other Ees)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(E acceding to U's termination of temporary shift assignment, not unlawful, notwithstanding termination violative of 8(b)(1)(A) and 8(b)(2) where E's action was not based on discriminatory motive, but rather on business justification of fear of legal or economic action; further, E did not know U had breached duty of fair R)

5029-6293 Use of company car or facilities

Cardinal Heating and Cooling, Inc. **JD-835-79**
(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

5029-6800 **Participation in discriminatory administration of insurance, pension, and other benefit plans**

B. G. Costich & Sons, Inc., et al. v. N.L.R.B. **613 F.2d 450 (C.A. 2) (1980)**
(Es' contributions to pension fund on behalf of casual Ees who were U members but not on behalf of non-U casual Ees, not unlawful; even if improper motive were found, no 8(a)(3) violation could be made out since only such discrimination as encourages or discourages U membership is prohibited whereas, in instant case, benefit to U members would not induce non-U Ees to join U inasmuch as E's conduct had no immediately realizable impact on rights of such Ees who never held reasonable expectation of receiving benefits afforded only to U Ees)

5029-7500 **Discipline**

Metropolitan Edison Company **252 NLRB No. 147**
(disciplining U officers more severely than other Ees for participating in sympathy strike in violation of no-strike clause, violative)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Weyerhaeuser Company **251 NLRB No. 097**
(warning and suspension of U adherent for returning late from his break and eating at his work station, not unlawful, where E issued warnings long prior to U campaign and there was no conclusive evidence showing that such discipline was related to any *crack down* on Ees as result of U campaign)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(warning given to Ee over lateness, not violative, where alleged hostility against Ee arose from incident too remote in time (2 months) to have been significant factor)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(charging Ees with unexcused absences because of their refusal to cross picket line of U representing other Ees af E's plant, unlawful, where E was aware that Ees were engaged in honoring picket line and that its practice of charging Ees with unexcused absences was being challenged as unlawful before Bd)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(dismissals and other disciplinary action taken against U supporters for various asserted reasons, not unlawful, where Ees' U activities were slight and took place long before events leading to disciplinary action occurred, and E's treatment of Ees was in accordance with its policy and was not unreasonable in the circumstances)

Northern Telecom, Inc. v. N.L.R.B. **618 F.2d 421 (C.A. 6, 1980)**
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

5029-7533 Reprimand or warning

Joshua's, Inc. d/b/a Fitzwilly's **253 NLRB No. 082**
(implementation of warning system designed to coerce and restrain Ees in violation of their Sec. 7 rights)

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge to suspension and written warning for Ee's refusal to drive tractor-trailer violative, where Ee had good faith and reasonable belief that vehicle was unsafe, and E's adverse action was taken because Ee acted in reliance on U contract in concert with U officials)

United States Steel Corporation **252 NLRB No. 178**
(violation where Ee was suspended and reprimanded for inquiring whether he would get contractual move-up pay for driving tractor, a task normally performed by another Ee at higher rate)

Republic Die and Tool Company **252 NLRB No. 092**
(issuing written warnings to Ee because he filed contractual grievance, violative)

United Parcel Service, Inc. **252 NLRB No. 145**
(E's issuing warning to Ee and later discharging Ee for allegedly overstaying breaks and falsifying timecards, violative where E was motivated by unlawful reasons to find *good cause* to discharge Ee because of his activities in connection with PROD and Ussurge, as well as his participation in class action suit against E)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(issuance of written reprimand to U adherent for being out of position violative, in view of lack of evidence that other Ees had received write-ups for being out of position)

Certain-Teed Insulation Company **251 NLRB No. 208**
(verbal warnings to U representative for alleged poor performance and being away from assigned work place, following his presentation of grievance, violative, where Ee was not reprimanded at time alleged infractions occurred, thus indicating that incidents were not considered significant by management, and there was no evidence of verbal warnings for similar offenses)

Certain-Teed Insulation Company **251 NLRB No. 208**
(written warning to Ee who was picketing E's premises wearing sandwich board sign stating E was unfair to its Ees for entering *unauthorized* area of plant while on his way to restroom, violative, where E has no rule that prohibits Ees from going in plant to use restroom when they are not scheduled to work)

Weyerhaeuser Company **251 NLRB No. 097**
(warning Ees during U campaign about being away from work stations based on more stringent enforcement of rules, violative)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(E's system of written warnings issued to ex-strikers, implemented until there were no longer any ex-strikers on payroll, unlawful, where E's action was result of change in warning procedure calculated to harass and provide grounds for discharging ex-strikers who were recipients of unprecedently large number and discrepant proportion of warnings)

IML Freight, Inc. **249 NLRB No. 111**
(warning Ee for refusing work assignment, not unlawful, where GC failed to establish that warning was motivated by Ee's report to health authorities; Ee did not assert illness until after refusing to do cleanup job)

IML Freight, Inc. **249 NLRB No. 111**
(warning letter to U stewards for participating in inpromptu meeting during work time to discuss grievance, not unlawful, where warning dealt solely with group meeting during work time in violation of contract and not about grievance being discussed of which E had no knowledge)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(issuance of warnings to U activist, unlawful in view of unreasonable and implausible explanation by E)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(reprimand and discipline of Ee on two separate occasions held not unlawfully motivated by desire to retaliate against Ee for his efforts through U on behalf of fellow Ee, where reliability of Ee's recollection of events was suspect, valid basis for reprimands existed, and circumstances upon which reprimands and discharges were based did not support conclusion that they were based on unlawful reasons)

Maremont Corporation **JD-(ATL)-16-80**
(issuing written warning to U adherent for allegedly *loafing* and unauthorized use of xerox machine, violative, where no evidence was offered that Ee neglected his work and record showed other instances of Ee use of xerox machine w/o disciplinary action)

Hunter Fan and Ventilating Company **JD-525-80**
(discipline of Ee not violative, where she was not singled out for disciplinary action because she filed a grievance as contended, but because she had violated company rules concerning which she had been previously cautioned)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(substantial evidence supported finding that issuance of written reprimands where oral reprimands were customarily issued in the first instance and where all but one who received written reprimands were U activists, was unlawful)

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(violation where Ee was reprimanded, not as alleged because of her U activities during working hours, and harassment of other Ees, but because of her status as a leading U activist)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(ct enforced Bd's finding that Ee was reprimanded by E because he was suspected of engaging in U activities and E sought to deter him from such activities)

5029-8700 Refusal to grant leave

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(denying reinstated Ee extended leave of absence and terminating her at time other Ees had been granted extended leaves of absence held violative)

5029-8900 Transfer

J. C. Penney Company **252 NLRB No. 047**
(refusal to transfer U-represented floor sales department Ees to new catalog sales department, violative, where E rejected such Ees applications for transfer to avoid having U adherents w/i its complement of catalog sales Ees)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(E's refusal to accede to request of former U president upon his return from strike to different shift, not unlawful, where refusal was because of need for close supervision in view of Ee's previous serious threat during strike upon life of non-striker)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(refusal to accede to request of Ee who had been member of U's negotiating committee for transfer to truck driving job, unlawful, notwithstanding E's contention that closer supervision needed than would be possible on outside job in view of ee's alleged strike misconduct)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(U council's transfer of Ee-staff members to different locations in their assignments of servicing U locals held not motivated by legitimate business considerations, where Ees were experienced lobbyists for council in state legislature in their original assignments; Ees were not given notice of intent to transfer them; only after council had taken issue with Ees' attendance at U meeting and after their return from unlawful suspension were transfers announced; and only Ees herein were singled out from among other Ees E intended to reassign)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(alleged complaints regarding servicing of locals against Ee-staff members of U council by rank-and-file members held not reason for discriminatory transfer of staff members, where council administrator never counseled one member concerning alleged servicing complaints nor tell him that such complaints were reason for transfer and, in discussing transfer with another member involved in transfer, administrator did not mention alleged servicing complaints as reason for transfer; in stead, administration had commended latter Ee on his work in his area)

Hedison Manufacturing Company **249 NLRB No. 096**
(E's conduct in imposing conditions on transfer to other departments of press department Ees selected for layoff, whereby Ees would be permanently transferred, would forfeit seniority, and receive reduction in pay, unlawful, where such action was not in accord with E's past practice, E displayed pervasive U animus and had special awareness of U activity in press department, imposition of conditions was not based on economic considerations but on combating Ees' U activity, and E did not treat similarly situated Ees in another department in same manner)

Hedison Manufacturing Company **249 NLRB No. 096**
(E's asserted reasons for imposing allegedly discriminatory conditions on transfer of Ees to other departments in lieu of laying them off, rejected, where there was no evidence to justify E's refusal, purportedly because of retraining expenses, to allow transferred Ees to return to their department when work became available; E's explanation for reducing transferees' wages was unconvincing since transferees, experienced in other work in plant, were to be paid as newly-hired Ees; and E did not impose any conditions on similar transfers involving Ees in another department)

5029-8900—Cont.

Detroit Diesel Allison Division, General Motors Corporation **249 NLRB No. 089**
(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(denial of U adherent's request for transfer to another job, unlawful, where E kept Ee in job, which was beyond his capabilities, until such time as it could discharge him for low production, and finding herein is supported by discriminatory treatment of Ee upon his request for reemployment after his discharge)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(temporary transfer of Ee to another of E's locations because Ee was uniquely qualified to perform project, because Ee was more readily available for temporary assignment, and because Ee would have less travel time to new location, not unlawful, notwithstanding GC's contention that E transferred Ee to neutralize his continued activity on U's behalf)

Georgetown Steel Corporation **JD-819-79**
(transfer of truck drivers into labor pool at lower pay held not unlawful since transfer was for economic reasons and not for Ees' U activities whereby they invoked U assistance to get them reinstated to their former jobs; E advanced plausible explanation for cost cutting in trucking department, there was no evidence that E had grudge against Ees or any U animus; instead E had good working relationship with U, and many Ees complained directly to U about E w/o refusals)

5029-9400 Refusal to grant overtime

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(supevisor's change in attitude toward Ee after latter became known as U adherent, resulting in Ee's loss of overtime work and less remunerative work during his regular shift, unlawful)

Lyman Steel Company **249 NLRB No. 040**
(depriving U advocate of overtime assertedly because his machine had suffered oil leak held violative where other machine operators had suffered oil leaks earlier w/o repercussions from E)

Penz Tool and Manufacturing Co., Inc. **JD-644-80**

5029-9500 Discontinuance or reduction of washup time

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

5029-9600 Requiring use of timeclock

Weyerhaeuser Company **251 NLRB No. 097**
(installation and required utilization of timeclock, not unlawful, where such change was based on desire of Ees initially expressed prior to U campaign and later voted on by Ees)

5029-9700 Change in job duties

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(reassignment and subsequent layoff of Ee, unlawful, where at U meeting Ee asked whether contract provisions calling for overtime equalization pay by departments or classifications applied to her lab job, and action taken against Ee occurred because she raised such issue which offended chief steward whose roommate was Ee's coworker in lab and was beneficiary of favorable discrimination by receiving overtime pay under same conditions that overtime pay was denied to Ee)

5034 ACTIONS AFFECTING SENIORITY

5034-3300 Reduction of, or failure to grant seniority

Maywood, Inc. **251 NLRB No. 139**
(stripping Ee of his leadperson duties because of his U activities violative)

5034-6700 Discriminatory seniority policy

General Grocer Company **JD-591-80**
(E's and U's action in changing system by which truckdrivers bid, on basis of seniority, for assignments to E's city run deliveries, not unlawful, since U's conduct, following its acquiescence to E's desire to change bidding system for economic reasons, was neither arbitrary, capricious, nor in bad faith, inasmuch as U justifiably viewed its position as effort, under agreement with E, to regain lost rights of its old members as opposed to rights of its members who had transferred from sister local)

5034-6750 Superseniority

Sheaffer Eaton Division of Textron, Inc. **251 NLRB No. 141**
(following election, E's granting U steward top seniority in permanent job classification pursuant to contract's superseniority provisions which specifically apply to *bump/layoff* status found not violative, although it resulted in his transfer from lower paying job at which he had been working while in *bump/layoff* status and bumping Ee whom he replaced who had greater job seniority into lower paying job)

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

5040 REFUSAL TO PROMOTE

National Steel Products **252 NLRB No. 120**

Coating Products, Inc. **251 NLRB No. 170**
(refusal to promote Ee to leadman where he was already performing work until after U campaign violative)

Ford Motor Company **251 NLRB No. 066**
(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(violation where E refused to promote U activist *as long as she was engaged in organizational activities for the Union*)

5050 Demotion

Hall of Mississippi, Inc. **249 NLRB No. 119**
(demotion of leadperson because of his U activities and as part of E's efforts to chill U activity in plant, violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(although record did not show that Ee with less seniority than discriminatee remained in department, Bd found demotion unlawful where timing of demotion, following interrogation about Ee's pro-U sentiments, coupled with E's failure to introduce evidence to negate inference of unlawful motivation, supported such finding)

5053 Transfer

International Business Systems, Inc. **247 NLRB No. 102**
(E's listing Ee, who was known to be active U supporter, in nonlithographic department should it be determined that lithographic unit petitioned for was appropriate, not violative of Sec. 8(a)(3), nor change of job duties for discriminatory reasons, even if Ee's U activity might have affected E's determination as to which department to place him)

5056 Lockout

5056-0100 Generally

5056-0175 Employer's motivation or intention

Century Moving & Storage, Inc. **251 NLRB No. 083**
(no *lock-out* where E, knowing that Ees would be attending U meeting before work usually started, moved up starting time of workday for that date, since E had valid business reason for doing so, had no knowledge when U meeting would end, and warehouse was locked because everyone was out on trucks working)

5059 SHUTDOWN OR TERMINATION OF OPERATIONS

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**

5059—Cont.

(layoff all but skeleton force one week after Bd agent scheduled pre-election hearing and closing plant after E lost election violative, in view of timing, E's vigorous campaign, economic issues were raised only after U won election and dissatisfaction with work quality was voiced only after U appeared)

Armored Transport, Inc. **252 NLRB No. 061**
(shutdown of E's operation which resulted in layoff of all its Ees violative where E was retaliating for Ees actions of trying to form U)

Franklin Fouts, d/b/a B & F Cartage **251 NLRB No. 068**
(termination of business, not unlawful, under *Darlington* doctrine since E terminated all operations, even though admittedly motivated by U animus, and ceased to exist except for moneys owed to it)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(shut down of job for remainder of day following E's vehemently stated opposition to U after U claimed majority, where there was no explanation of necessity for shutdown, unlawful; neither E's asserted ignorance of law nor fact all Ees included in shut down sustained as defenses)

C-F Air Freight, Inc. **247 NLRB No. 060**
(closing of facility and subcontracting of Ee's work, unlawful, where E's defense that financial losses at facility necessitated such action, unlawful; it was fallacious to say, on one hand, that facility was such an economic disaster as to require its closing and, on the other hand, to subcontract its work; subcontractor did not prevent E from suffering financial losses; there was no diminution of work after subcontractor began performing it; and subcontractor's work force was substantially the same)

Atlan Inc. **JD-890-79**
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5060 RELOCATION OF OPERATIONS

National Car Rental System, Inc. **252 NLRB No. 027**
(systematic exclusion of E's garage Ees and mechanics at its closed truck rental facility for consideration for employment at E's relocated facility, violative where E had voiced desire w/i ranks of management to have nonU operation at relocated site)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(transfer of Ees from E to E's alter ego, unlawful, since E's purpose for transfer was to avoid its collective bargaining obligation to Ees represented by U)

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. 098**
(refusal to transfer unit Ees to new location, not violative, since change in original bargaining unit was so fundamental and diverse that new location was not integral part of existing unit at original location)

5062 SUSPENSION

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(suspension of U steward allegedly for insubordination in refusing, at E's request, to return copy of written disciplinary warning issued to him allegedly for bypassing first step of grievance procedure, unlawful, where there was longstanding controversy between E and U overapplication of contract, E exhibited animosity toward steward and his U activities, and grievance in question dealt with E's refusal to excuse steward and fellow Ee when they absented themselves from work, after giving notice to E, to go to Bd's office to give evidence, which constituted protected activity)

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(suspension of U steward allegedly for insubordination in refusing, at E's request, to return copy of disciplinary warning issued to him allegedly for bypassing first step of grievance procedure, unlawful, where grievance dealt with E's refusal to excuse steward and fellow Ee when they absented themselves, after giving notice to E, to go to Bd's office to give evidence; E's decision not to excuse absence was discriminatory and inherently destructive of statutory rights, and their being at Bd office was *but for* cause, not only in their being unexcused but also in steward's activities to remedy claimed injustices)

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge to suspension and written warning for Ee's refusal to drive tractor-trailer violative, where Ee had good faith and reasonable belief that vehicle was unsafe, and E's adverse action was taken because Ee acted in reliance on U contract in concert with U officials)

United States Steel Corporation **252 NLRB No. 178**
(violation where Ee was suspended and reprimanded for inquiring whether he would get contractual move-up pay for driving tractor, a task normally performed by another Ee at higher rate)

Pittsburgh Press Company **252 NLRB No. 075**
(suspension of U organizer, unlawful notwithstanding E's allegation that he was suspended for threatening Ee in context of U organizing activities and offering to falsify medical certificate for her)

Alfa Leisure, Inc. **251 NLRB No. 088**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

Weyerhaeuser Company **251 NLRB No. 097**
(warning and suspension of U adherent for returning late from his break and eating at his work station, not unlawful, where E issued warnings long prior to U campaign and there was no conclusive evidence showing that such discipline was related to any *crack down* on Ees as result of U campaign)

Savannah Wholesale Company **251 NLRB No. 087**
(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

Classic Truck Rental Corp. **251 NLRB No. 056**
(suspension of U adherent who had filed charges with Bd, not unlawful, in view of Ee's *stealing time* by wasting time on job and continuing disregard for company rules despite several warnings, thereby prompting E to file notice of intent to arbitrate disciplinary action against Ee because of his inefficiencies as Ee and then suspending Ee after receiving arbitrator's advice to do so)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(suspension of Ees by administrator of U council on ground that meeting called by Ees' U and held at parent organization's facility violated council's policy curtailing Ees' contacts with such organization, unlawful, where administrator knew that meeting was called for purpose of addressing fellow Ee's discharge, which was protected activity; unlawful motivation was shown by attempt, following suspensions, to prevent Ees from meeting with their attorney; and administrator's concern about U meeting included Ees' *taking issue* with his disciplining of Ees and soliciting aid from other sources)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(contention that U council's suspension of Ee-staff members on ground that, by holding U meeting at parent organizations facility, they engaged in disloyal act, rejected, since Sec. 7 of Act is broad enough to encompass Ees' decision to choose, free of E interference, situs of their U meeting)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of known U adherents who left work contrary to revised notice of vacation schedule, unlawful, where other Ees similarly absent were not warned or disciplined for their infraction of E's orders)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of known U adherents for absence from their work area, unlawful, where they were absent no longer than 10 minutes during their break period, their casual greeting of other Ees in another department did not constitute a work interruption, and no other Ee had been disciplined for asserted reason)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of Ee for engaging in *horse play* with air hose, which was potentially dangerous to fellow Ee, not unlawful, where E investigated incident, thereupon reduced discharge to suspension, and exercised reasonable exercise of its business judgment in maintaining proper discipline with due regard for safety of its Ees)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(suspension of Ees for 60 days for participation in ULP strike, violative)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(suspension of formerly striking Ee assertedly because of damage to E's rental vehicle due to Ee's improper checking out of equipment before delivery to customer, unlawful, in view of E's animus toward ex-strikers, timing of suspension to Ee's activities as steward, absence of evidence of negligence on Ee's part and of precedent for punishment herein, E's predisposition to be punitive, and E's failure to place in evidence any written statement attributable to customer)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, intefered with foreman's job performance)

The Davis Company **249 NLRB No. 068**

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(suspension of U stewards for filing OSHA C and *too many nuisance grievances*, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspension of U committeeman for allegedly stealing customer receipts, violative, when made w/o prior warning and Ee told that *you have a lawyer* referring to U's counsel)

Pay 'N Save Corporation **247 NLRB No. 184**
(suspension and discharge of Ees for wearing U buttons on their store jackets, unlawful, since right to wear buttons is legitimate form of U activity, and there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

CTS Keene, Inc. **247 NLRB No. 141**
(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(giving Ee reprimands and subsequent suspension for allegedly abusing restroom policy unilaterally instituted, violative)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(suspension of driver, who had been involved in several accidents, held in reprisal for his U activities where other drivers had more serious accidents and were not disciplined, suspension closely followed Ee's request to attend Bd hearing and was in middle of number of discriminatory discharges, and latest accident was seized upon to disguise E's real motive in suspending Ee)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(suspension of U adherent assertedly because he did not bring proper tool to work, unlawful, where incident was contrived to punish Ee for his recent U activity in order to provide record of unsatisfactory performance preparatory to Ee's discharge)

Aydin Corporation, Vector Division **JD-528-80**
(no violation for suspending U officer for going to another work area where she was told not to go and for refusing to see supervisor about pay check error w/o written note or U witness present to hear grant of permission to go as Ee cannot set conditions to compliance with order from supervisor)

Taylor Implement Division, Pittsburgh Forgings Company **JD-474-80**
(Ee's suspension and discharge violative where reason was not, as contended, his parking his automobile in unauthorized location but was, rather, his active participation in U's second effort to represent Ees after an election loss)

Lester Industries, Inc. **JD-97-80**
(suspension of chief U protagonist purportedly for threatening anti-U fellow Ee, unlawful, where E seized upon anti-U Ee's belated, implausible account of purported threat as pretext for suspension of Ee for engaging in U organizing and protected concerted activity)

Voss Steel Corporation **JD-216-80**
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(suspension of Ees for refusing to perform job assignment for safety reasons, not unlawful, where ALJ's finding to the contrary lacked factual basis, and there was no contention that suspensions were so *inherently destructive of Ee interests* that anti-U motive is irrelevant)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

5067 LAYOFF

Classic Truck Rental Corp. **251 NLRB No. 056**
(assuming that evidence reflected that co-E of E in joint E relationship laid off Ee because of his suspension by E, layoff not unlawful, since Ee's suspension by E was for legitimate reasons, and Ee's work with co-E was adjunct or extension of work with E, and when E suspended Ee, he did so from both jobs)

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

5067-0100 Generally

Hedison Manufacturing Company **249 NLRB No. 096**
(laid off Ees who were not affirmatively shown to be U supporters held discriminated against as if they had been U supporters, where they were caught up in their fellow Ees' U adherence and were victims of E's effort to crush U)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(layoffs not unlawful where E had incurred substantial losses and facility had been listed for sale before onset of U activity; and site of new operation was not ready for use at time of closing)

5067-1200 For union or other protected activity

Armored Transport, Inc. **252 NLRB No. 061**
(shutdown of E's operation which resulted in layoff of all its Ees violative where E was retaliating for Ees actions of trying to form U)

Behring International, Inc. **252 NLRB No. 055**
(E unlawfully laid off its warehouse Ees and subcontracted its warehouse work where E's actions occurred shortly after unlawful threats and grants of benefits in response to U organizing campaign; Ees had been praised recently for quality of their work; Ees who attempted to forestall election were retained at higher rates of pay following subcontracting, while Ees who had not opposed U were laid off; and E can point to no contemporaneous event which might have motivated layoffs)

B. E. & K., Inc. **252 NLRB No. 036**
(preelection layoff of members of new crew created by E so as to be able to transfer Ees to and from such crew and thereby enable E to rid itself of some known U adherents by eliminating entire crew, unlawful; E's defense on ground layyoff was necessary because of *unexpected* need to curtail work because of delay in installing new equipment, rejected, in view of E's awareness of potential delay for sometime prior to layoffs)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(Bd held Ee was not discriminatorily laid off, where although she had signed U authorization card on second day of employment, there was no evidence that E had any knowledge of her signing such card prior to layoff, at end of second day of work Ee expressed clear lack of desire to perform work she had been assigned, and she failed to appear for work at scheduled time on third day; fact that E offered no explanation for her layoff is not probative of discriminatory motive under the circumstances)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(layoff of helpers, unlawful since it was necessitated by discriminatiory discharge of U leaders they helped)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**
(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(permanent layoff of U adherent in contrast to brief layoffs of coworkers, unlawful, in view of E's U animus and lack of business justification)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because they devoted too much time in repairing E's vehicle as result of which customer was not serviced, unlawful, where

5067-1200—Cont.

Ees were known active U supporters, they had attended U meeting shortly before layoff, and E had profound U animus)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because E lost contract with major customer, unlawful, where E failed to explain circumstances involved and to mention layoffs or any likelihood of loss of contract to Ees prior to layoff, and supervisors admitted to Ees that E would rather close operation than deal with U)

Henry A. Youne, d/b/a Columbia Engineers International **249 NLRB No. 144**
(shut down of job for remainder of day following E's vehemently stated opposition to U after U claimed majority, where there was no explanation of necessity for shutdown, unlawful; neither E's asserted ignorance of law nor fact all Ees included in shut down sustained as defenses)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(layoff of known U adherent, assertedly because of seasonal decline in business and lack of work, unlawful, where E's U animus was evidenced by statement that it was against U, E engaged in coercive unlawful conduct before layoff, Ee was E's most senior Ee and had never been laid off during previous slow seasons, and, unlike other Ees selected for layoff, Ee was not asked by E about his slow season plans)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**
(layoff of Ee, unlawful, in view of its timing in relation to Ee's protected activities and to work week and pay period, unlawful interrogation prior to layoff, and implied threats of reprisals and plant closure made following layoff)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(permanent layoff of U adherent, unlawful, where layoff was effected in complete disregard of E's layoff, seniority, and bumping policies; despite job vacancies and new hires, Ee was never recalled to fill vacancies or other jobs which he could handle; and E treated Ee differently than other laid off Ees by contesting Ee's unemployment compensation)

Schneider, Inc. **247 NLRB No. 071**
(layoff of Ee for activities whereby he persistently attempted to obtain U membership for other nonmember Ees and himself, unlawful)

Eastern Engineering & Elevator Co., Inc. **247 NLRB No. 004**
(in overruling ALJ's credibility findings, Bd found based on reasonable inferences from record as a whole that E unlawfully laid off experienced Ee before new Ees in retaliation for Ee's filing internal U charges against fellow Ee and that E's reasons for Ee's layoff were pretexual)

Wire Products Co., Inc. **JD-537-80**
(layoff violative where E though Ee instigated *union talk*)

Vulcan Fuel Corporation **JD-842-79**
(laying off two Ees with least seniority, violative, where economic reasons were found pretextual since lay-offs occurred, contrary to past practice, on eve of busy season; further, E saw one Ee as source of trouble where second to least seniority, proclaimed himself elevated to steward; inference drawn that Ee with least seniority was laid off to get rid of self-proclaimed steward)

5067-1900 For grievance participation or activity

Russ Togs, Inc. **253 NLRB No. 099**
(layoff of Ees for protected activity of grieving and urging other Ees to grieve over E's failure to pay contractual wage rates, unlawful)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(acceding to U's demand that E post Ee's job for bids, with clearly foreseeable result that she would be laid off because of initiating grievance proceedings, unlawful)

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(reassignment and subsequent layoff of Ee, unlawful, where at U meeting Ee asked whether contract provisions calling for overtime equalization pay by departments or classifications applied to her lab job, and action taken against Ee occurred because she raised such issue which offended chief steward whose roommate was Ee's coworker in lab and was beneficiary of favorable discrimination by receiving overtime pay under same conditions that overtime pay was denied to Ee)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

5067-2500 To avoid dealing with union

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(layoff all but skeleton force one week after Bd agent scheduled pre-election hearing and closing plant after E lost election violative, in view of timing, E's vigorous campaign, economic issues were raised only after U won election and dissatisfaction with work quality was voiced only after U appeared)

Armored Transport, Inc. **252 NLRB No. 061**
(shutdown of E's operation which resulted in layoff off all its Ees violative where E was retaliating for Ees actions of trying to form U)

Behring International, Inc. **252 NLRB No. 055**
(E's economic defense to layoff of warehouse Ees on ground that subcontracting its warehouse labor ultimately could be financially beneficial, rejected, where E was motivated , at least in part, by desire to reduce possibility of another U election in future)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(unionized corporation's layoff of its Ees and subcontracting of their work to its nonU *alter ego* sole proprietorship, unlawful)

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

Atlan Inc. **JD-890-79**
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5067-3700 Discrimination in selection in economic lay-off

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(selection of Ees for economic layoff, unlawful where Ees were selected out of seniority, supervisor and general foreman told Ees that U supporters would not be called back to work and that reason for layoff was to get rid of people who were trying to organize U, E hired new Ees before offering Ees on layoff opportunity to be employed, Ees recalled were as new Ees w/o their prior benefits and for probationary period, and E hired new Ees while Ees were still on layoff)

K & B Mounting, Inc. **248 NLRB No. 071**
(violation where, although E's decision to layoff six Ees was economically motivated, three Ees were discriminatorily selected by E in determining which Ees should be laid off)

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

5067-3700—Cont.

(selection of U adherent for economic layoff, unlawful, since motivated by adherent's U activities where previous unlawful warning letters were factor, E's owner had suggested to adherent she might be happier working elsewhere and offered her severance pay to seek other employment)

N.L.R.B. v. Triangle Sheet Metal Works, Inc. **607 F.2d 998(T) (C.A. 2, 1979)**

(layoff of valuable Ee who was campaign manager for candidate for U president whom E opposed violative notwithstanding economic necessity for layoff since Ee's name not on original layoff list but his name was substituted thereon by president)

5067-6200 Consequence of employer's unlawful transfer of work

St. Regis Paper Company **247 NLRB No. 105**

(violative)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**

(layoff of Ees at company covered by contract rather than those Ees that E thought were not covered at another company following shift of work from one company to other unlawful, where both companies constituted single E and Ees of both companies constituted single appropriate unit)

5067-8700 To discourage support for disfavored union

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**

(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(layoff of Ees, unlawful, notwithstanding contention layoff due to problems with production process, as layoffs took place w/o regard to seniority after Ees had rejected E's contract proposals to Ee committee and E gained knowledge of Ees' support of outside U, production problems had existed for some weeks prior to layoffs and E hired new Ees during period; further, Ees were recalled day after committee signed contract with E)

5073 Discharge

5073-0100 Generally

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**

(proper test in determining whether discharge of Ee is ULP is whether anti-U animus was moving cause, and not whether discharge is only partially motivated by anti-U animus; to give rise to ULP *but-for* cause of discharge is required)

5073-1100 What constitutes discharge

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

(Ees who concertedly went out on strike in protest of discharge of U adherent and in protest over meeting in which E laid down working conditions to be followed on job held not to have been discharged, where none of the Ees stated that they had quit and were not told at any time that they were terminated, and E believed Ees quit when they walked out w/o any prior notice and, upon their return, E made conciliatory moves and stated that things would change)

5073-1101 Generally

Sentry Investigation Corp. **249 NLRB No. 130**

(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge even in absence of words; where such can be reasonably inferred from circumstances)*

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

5073-1114 Constructive discharge

Newport News Shipbuilding & Dry Dock Co. **253 NLRB No. 072**

(Ee found to have quit rather than have been constructively discharged for U activity where after period of light duty due to injury, she was transferred back to her own more onorous position; Ee was fully healed, other Ees performed same work, and Ee had originally asked to be placed in that position)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**

(outspoken U supporter held constructively discharged where she quit her employment after E's owner, who had demonstrated U animus, subjected her to continued harassment, including giving her peculiar assignment, guarding her at work urging her to leave, telling her E would never fire her, and admonishing another Ee to listen to what was said, so that E would have a witness of whatever was going to happen)

Maywood, Inc. **251 NLRB No. 139**

(violation where E cancelled U advocate's status as leadperson trainee, ended his chances of wage increases or advancement, cursed him, revoked his promised wedding leave, and invited him to quit if he did not like it)

Maywood, Inc. **251 NLRB No. 139**

(no constructive discharge where Ee who reported herself absent because she was ill with stomach cramps and did not return to work or call in again, was terminated 8 days after date on which she reported sick; plant rule provided for termination after 3 consecutive days' absence w/o reporting in)

Maywood, Inc. **251 NLRB No. 139**

(violation where E, in retaliation against Ee for engaging in U activities, transferred her to more onerous job of working on core tables all day long in expectation that she would quit, and she quit when she *couldn't handle it because it was too hard*)

Coating Products, Inc. **251 NLRB No. 170**

(transfer of U adherent to less desireable job on night shift which E knew he could not take because Ee already worked at another night job, violative)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**

(refusing to allow to return to work Ees who had walked off job to protest reduction in piecework rate violative and in effect constructive discharge)

La Habra Dodge, Inc. **251 NLRB No. 001**

(held voluntary quit and not constructive discharge notwithstanding painter's helper in accordance with industry custom assumed he too was terminated when E discriminatorily discharged painter with whom he worked as E never discharged helper and E was his E and not painter)

Flippo's and Company, Presnell & Stowe Tank Company, Presnell & Stowe Welding Company, Inc. **250 NLRB No. 145**

(E's offer of janitor's job or nothing to U adherent-welder upon latter's refusal to sign application containing non-competition clause when company was sold held constructive discharge and unlawful, E inquired into U adherent's U membership and later said he knew that latter had called the U but was not going to discharge him because E knew that he would go to Labor Bd)

Logan Coca Cola Bottling Company **250 NLRB No. 164**

(E's insistance that U adherent with back injury had quit his job rejected and held constructive discharge where Ee was injured on job, notified E, saw physician and received workman's compensation)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**

(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Magnesium Casting Company, Inc. **250 NLRB No. 107**

(unlawful constructive discharge not established in absence of intolerable working conditions and unlawful motive where, although Ee may have been given less overtime and less desirable work, her personal problems triggered her sudden decision to quit)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**

(Ee's quiting held unlawful constructive discharge where E induced Ee to quit because of her striking and U activity subsequent to her reinstatement; harassment, vandalism, and obscenities inflicted upon Ee had management sanction and were meant to punish Ee for striking and other U activity and were so offensive and recurring as to make Ee's work situation intolerable)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

(violation, where E's owner vehemently denounced U after U claimed majority and then shut down job, informed Ees that anyone who wanted to stay with him could contact him that night and at same meeting asked which Ees had signed cards for U, since Ees reasonably lead to believe that they were faced with choice between continued employment w/o U or no employment at all)

Don Pizzolato, Inc. **249 NLRB No. 136**

(Ee offered reinstatement after discriminatory layoff to inferior position constructively discharged)

Hall of Mississippi, Inc. **249 NLRB No. 119**

(violation where E provoked U adherent to quit by assigning her to department where she was isolated from other Ees and kept idle for lack of work)

Cable Vision, Inc. **249 NLRB No. 062**

(assignment to stand-by position of known U activist hired as installer with understanding that as installer he would not have to work standby position held unlawful as discriminatory assignment and constructive discharge where E knew that assignment would interfere with Ee's outside work and E quit as result

Lyman Steel Company **249 NLRB No. 040**

(U adherent's quitting job, not only because E denied Ee's vacation request, but also because of E's implicit rejection of Ee's plea for security at his work station, held *constructive discharge*)

B. N. Beard Company **248 NLRB No. 016**

5073-1114—Cont.

(constructive discharge of Ee to whom E offered wage rate lower than that provided for in U contract, unlawful, where Ee quit rather than relinquish statutory right to be paid in accordance with contract; fact that Ee intended to leave E's employment in future is no defense where decision to quit was hastened by his being compelled to accept lower wage rate contrary to his statutory right)

General Meats, Inc. **247 NLRB No. 153**

(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**

(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

Sullivan Transfer Co. **247 NLRB No. 117**

(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

Leyendecker Paving, Inc. **247 NLRB No. 010**

(absent evidence that Ee had specific function in E's employ, assignment to different work because of which Ee quit did not constitute unlawful constructive discharge, where assignment was not caused by Ee's U activities of which E had no knowledge)

Magic Mountain Corporation **JD-337-80**

(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**

(strikers who failed to return to their jobs by deadline set by E and who were replaced by E held to have been *constructively* discharged)

Albertson's Inc. **JD-(SF)-104-80**

(no constructive discharge, in the absence of an alleged calculated plan of harassment to cause Ee to quit)

Newspaper Printing Corporation **JD-203-80**

(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

N.L.R.B. v. Ridgeway Trucking Company **625 F.2d 122 (C.A. 5, 1980)**

(based on test of whether Ees could reasonably infer from E's language that they were discharged, ct found that Ees were constructively and unlawfully discharged for protected strike where they indicated that they believed they were discharged by requesting their paychecks, removing their belonging from E's trucks and going to an attorney; if E had believed they were quitting, he reasonably should have asked about their intentions)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**

(constructive discharge by E's creation of intolerable working conditions when it ceased paying contractual benefits; conduct was inherently destructinve of Ee rights)

5073-1117 Discharge for cause

Piezo Technology, Inc. **253 NLRB No. 122**

(discharge of Ee not unlawful, notwithstanding his wearing of U button and U advocacy, where he had solicited on company time and had created two rather serious disturbances, in addition to threaten a fellow Ee)

Pork King Company, Inc. **252 NLRB No. 004**

(E's discharge of driver of delivery truck, not unlawful where discharge was for abandoning E's truck at unauthorized stop and leaving keys on seat so as to permit theft of valuable quantity of E's products, rather than for actively processing Ee grievances against E as U shop steward; E's decision to follow driver, which resulted in his discovery of driver's abandoning truck, was due to legitimate concern about driver's work habits in light of his earlier record)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Blue Bird Body Company **251 NLRB No. 196**

(discharge of active U adherent for *goofing off* not violative where GC failed to prove by preponderance of evidence that discharge was motivated in whole or part by Ee's U activity)

Bullock's **251 NLRB No. 082**

(discharge of Ee assertedly for demoralizing E's personnel by having copies of performance reviews in her possession and discussing them with fellow Ees, not unlawful, where dischargee surreptitiously and wrongfully obtained and copied fellow Ee's review, disseminated reviews' contents to another Ee, advising latter that her review was unfavorable in comparison with others, and dischargee's remarks leading Ee to believe that her job could be in a precarious position support conclusion that dischargee's conduct had disruptive and demoralizing effect on E's personnel)

Hotel St. Moritz, Inc. **251 NLRB No. 015**

(no violation where E filed charges seeking discharge of hotel housemen's U delegate because of his threats and derogatory remarks to E when latter questioned his delegate status at E's meeting with lobby porter concerning porter's changing from membership in his own U to membership in delegate's U; accepting, *arguendo,* E's obligation to recognize and deal with delegate as representative of porter, who belonged to another U, delegate's actions were nevertheless so opprobrious as to render his conduct unprotected)

Magnesium Casting Company, Inc. **250 NLRB No. 107**

(physical assault upon supervisor held cause for discharge, where discharge was immediate and spontaneous reaction to attack, a normal reaction of supevisor with such authority, regardless of aggressor's U sympathies)

Central Freight Lines, Inc. **250 NLRB No. 063**

(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Neptune Waterbeds, Inc. **249 NLRB No. 168**

(no violation where active U adherent was discharged for solicitation on E's time, violence toward other Ees, and lateness; although other Ees' work records showed deficiencies, no other Ee was shown to have work-related problems in as many areas as dischargee)

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(discharge of U advocate for falsifying work order 4 days prior to his termination, not violative notwithstanding Ee was discharged on same day he solicited for U; no evidence in record that anyone responsible for Ee's discharge knew that he engaged in U activity)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**

(no violation by discharge of two U adherents in pre-election period where discharge of one was for charging parts and labor on E's credit far in excess of amounts usually permitted and then failing to pay for them, and discharge of the other was for overordering parts for E and for covering up first Ee's overextension of credit)

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**

(discharge of known U adherent for refusals to work overtime, insubordination, and delaying flight, not unlawful in light of cumulative infractions and progressive discipline)

Schwebel Baking Company **249 NLRB No. 005**

(termination of U steward held lawful for refusal of proper order to return to work during walkout over firing of fellow worker, rather than for his handling of discharged fellow worker's grievance as alleged)

Schwebel Baking Company **249 NLRB No. 005**

(discharge of U steward held lawful for assault on company official, rather than, as alleged, for carrying out his duties as U steward)

Bechtel Incorporated **248 NLRB No. 158**

(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Landmark Beef Processors, Inc. **248 NLRB No. 041**

(discharge of lead person, who was U advocate, for single unexcused absence held not violative where E had demonstrated no anti-U animus and Ee held position of some responsibility for which she received higher pay than others)

North Cambria Fuel Company, Inc. **247 NLRB No. 176**

(termination of striking Ees for serious misconduct, not unlawful, where E reasonably believed that strikers were guilty of improper conduct in view of their gathering outside E's gates in contempt of ct injunction, damage done to suppliers' trucks by rocks thrown by Ees and subsequent guilty pleas in ct to charge of disorderly conduct)

International Medication Systems, Ltd. **247 NLRB No. 190**

(discharge held for cause where Ee was not exemplary Ee even though timing of discharge, one month after Ee testified adversely to E in Bd proceeding, may appear suspicious; mere suspicion cannot substitute for ULP)

5073-1117—Cont.

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(dismissals and other disciplinary action taken against U supporters for various asserted reasons, not unlawful, where Ees' U activities were slight and took place long before events leading to disciplinary action occurred, and E's treatment of Ees was in accordance with its policy and was not unreasonable in the circumstances)

Keister Coal Company, Inc. **247 NLRB No. 049**

(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

Suburban Motor Freight, Inc. **247 NLRB No. 002**

(reprimand and discipline of Ee on two separate occasions held not unlawfully motivated by desire to retaliate against Ee for his efforts through U on behalf of fellow Ee, where reliability of Ee's recollection of events was suspect, valid basis for reprimands existed, and circumstances upon which reprimands and discharges were based did not support conclusion that they were based on unlawful reasons)

Browning-Ferris Industries of Ohio and Michigan, Inc. **JD-(SF)-313-80**

(discharge of U steward and other Ee not unlawful, notwithstanding fact that U steward was in process of attempting to secure paycheck for other Ee at time of discharges, where Ees invited E outside to fight, repeatedly threatened to beat him up and persisted in obscene threats and gestures)

Neckover Trailer Manufacturing Company **JD-256-80**

(discharge for cause in view of Ee's attempted fraud of work time; blatant infraction of rule regarding Ees' use of scrap metal, both as it related to use of material for own purposes and taking of material from plant; and Ee's threats against supervisors)

Cedarwood Care Center **JD-(SF)-315-79**

(walking off job w/o complying with order to report to supervisor proper grounds for discharge)

5073-1128 Eviction from work by fellow employees

5073-1128-5000 Acquiescence by employer

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(discharge of U committeemen because other Ees would not work with them, violative)

5073-1142 Impression of discharge conveyed to employee and acquiesced in by employer equivalent to discharge

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**

(nonsupervisory assistant foreman held to have been unlawfully discharged, where, after he indicated he wanted to step down as assistant foreman, E paid Ee on next day for his accrued vacation pay, as well as his regular pay, but made no allowance for severance pay and Ee was under impression he had been fired)

Sentry Investigation Corp. **249 NLRB No. 130**

(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge even in absence of words; where such can be reasonably inferred from circumstances)*

5073-1164 Notice of replacement to ULP strikes

Inta-Roto, Inc. **252 NLRB No. 111**

(ULP strikers who were unlawfully notified that they had been permently replaced found not violatively discharged because despite this notification, no evidence to show that request for reinstatement would be *utterly futile* and Ee required to request to be reinstated)

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**

(strikers who failed to return to their jobs by deadline set by E and who were replaced by E held to have been *constructively* discharged)

5073-1170 Pretext

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(discharge of U advocate-waiter, who had served as interpreter for U organizing committee assertedly for error in his sign-in time on time sheet, violative, where time sheet was closely monitored by headwaiter and testimony of headwaiter and manager to effect they had no knowledge of U waiter's U activity, was discredited)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

Production Plated Plastics, Inc. **247 NLRB No. 076**

(discharge of U adherent for pretextual reason of Ee using restrooms prior to his break, violative, where Ee had never been disciplined previously for using restrooms during working time, and record showed that fellow Ee had been given at least six warnings for same conduct w/o having been discharged)

Keister Coal Company, Inc. **247 NLRB No. 049**

(discharge of U adherents allegedly because E was overstaffed and Ees were unqualified for their jobs held violative where record showed one of discriminatees held miner's card from State and E hired replacements for discriminatees who would have to be trained and schooled at E's expense)

Galax Apparel Corporation **247 NLRB No. 026**

(discharge of Ee, unlawful, where E suspected Ee of being U adherent because of her association with other known U adherents, and E's excuse for discharge of low production was pretextual)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**

(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**

(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

5073-1184 Transfer to subcontractor

Tennessee Cartage Co., Inc. **250 NLRB No. 015**

(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

5073-2200 For engaging in protected activity

Lou Awald Chevrolet, Inc. **253 NLRB No. 113**

(discharge unlawful where date of discharge was accelerated because of U activist's attempt to organize Ees; although activist was next in line for termination due to E's declining sales, timing of sudden and immediate discharge indicated E's frustration with Ee's U activities)

Sav-On Drugs, Inc. **253 NLRB No. 045**

(E's discharge of pharmacy managers for activities on behalf of guild, unlawful, notwithstanding RD's findings in underlying R case that pharmacy managers were supervisors and guild was not labor organization; E's contention that it was entitled to rely on RD's decision as defense because there was no request for stay of RD's order and because RD's decision could be relied on until reversed, rejected)

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**

(discharge for soliciting in violation of E's invalid no-solicitation rule, unlawful)

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**

(discharge of unlawfully suspended steward allegedly for insubordination in refusing to leave plant at E's request upon his suspension, unlawful; although steward was insubordinate in refusing to leave, his insubordination was not so flagrant and was not sufficient, in circumstances of E's scheming to get rid of steward and rejection of conciliatory opportunity in favor of having steward arrested and removed by police, to forfeit Act's protection)

Sameric Corporation **253 NLRB No. 043**

(terminating one Ee by eliminating his shift and transferring another Ee and subsequently promoting him to supervisory status, violative, where both were U adherents seeking representation election for unit comprising of only themselves)

Pioneer Natural Gas Company **253 NLRB No. 003**

(discharge of Ee because she insisted that black coworker go to supervisor to complain about racially derogatory remark by another Ee, violative, since her action constituted protected concerted activity)

John Grissom, Mikos Doka-Suna, David Springer, and Richard Baker, A General Partnership d/b/a Natural Heating Systems **252 NLRB No. 152**

(discharge of Ee unlawful, where E resented Ee's interference with E's negotiations with one U by attempting to organize Ees on behalf of another U, and E considered such conduct rankest form of disloyalty which E believed fully justified Ee's termination)

McLean Trucking Company **252 NLRB No. 104**

(discharge of Ee and subsequent conversion of discharge to suspension and written warning for Ee's refusal to drive tractor-trailer violative, where Ee had good faith and reasonable belief that vehicle was unsafe, and E's adverse action was taken because Ee acted in reliance on U contract in concert with U officials)

Hammermill Paper Company **252 NLRB No. 172**

(discharge of Ee for participation in unprotected work stoppage solely because of his position as U steward, violative)

5073-2200—Cont.

Republic Die and Tool Company **252 NLRB No. 092**
(violation when E discharged Ee because he filed contractual grievance over prior discharge which had resulted in arbitration award granting him reinstatement with substantial backpay)

Corrugated Structures, Inc. **252 NLRB No. 079**
(discharge of Ee for complaining to U about reduction in pay, violative)

Americana Health Care Corporation of Ohio d/b/a Barberton Manor **252 NLRB No. 057**
(summary discharge of nursing aide violative, where reason was her U activities, and not, as contended, her patient abuse)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(discharge of leading U adherent for giving out pamphlets to Ees during lunchtime, violative even if she was *paid staff worker of the Union, who obtained employment in order to assist in organization*; being a paid staff worker of U does not denigrate from Ee's status as such)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(discharge of U activist assertedly for talking U on her break while Ee was working violative where U activist did not interfere with her own or other Ee's work)

Maywood, Inc. **251 NLRB No. 139**
(violation where E assigned U card signer to work full time on core table, refused thereafter to revoke the assignment, and finally discharged Ee; true motive was to get rid of a leader in campaign to organize plant)

Syracuse Dy-Dee Diaper Service **251 NLRB No. 135**
(discharge of U adherents, violative, where E's knowledge of Ees passing out U cards and holding U meetings was inferred from small size of plant, reasons asserted for discharges were pretextual, and timing of discharges occurred w/i two weeks of organizational campaign)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

McLane/Western, Inc. **251 NLRB No. 185**
(violation and interference where E was discharged, allegedly for breach of no-stealing rule by eating one cracker from damaged, unsalvageable carton, since E applied the rule in retaliation for Ee's suspected U support and as warning to other Ees)

Reinauer Fuel Transportation Corporation **251 NLRB No. 210**
(discharge held solely for Ee's U activities and refusal to work overtime held to play no role in the discharge; no Ee had ever been disciplined for refusal to work overtime, Ee did not state at any time that he would no longer work overtime, and there was no conclusive evidence Ee had refused to work overtime as alleged)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(discharge of U adherents, unlawful, where, even though their conduct was not exemplary, no one had previously been fired during entire year preceding U campaign, E's 8(a)(1) conduct had purpose of depleting U's ranks in order to rid itself of U, E seized upon supervisor's complaints about laid off Ees' work to discharge them because of their U activities, and firing of last U adherent completed E's prophesy that U's campaign would be finished)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(violation where Ee was discharged for turning to U for help to obtain higher pay he thought he was entitled to be paid)

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**
(discharge and failure to reinstate Ee because of his activities as U steward violative)

Alfred M. Lewis, Inc. **250 NLRB No. 183**
(Bd held that Ee's discharge, allegedly for his *bad attitude* and low production, was instead *solely* a result of E's unlawful production quota and disciplinary systems, since Ee's attitude toward E's unlawful production quotas caused his low production, and his attitude had developed, as reaction to E's counseling implemented as part of unlawful disciplinary system; Ee had refused counseling, as was his right, and his failure to accept it was not legitimate basis for discharge)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(discharge of Ee for stating at U meeting that county was very organized and that people would honor picket line outside E's store, unlawful)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**
(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(discharge of U adherent for refusing to allow her purse to be searched by supervisor, rather than by security guard, upon leaving Es warehouse, not violative, absent discriminatory motivation; fact E's vice-president offered to reemploy adherent and then withdrew offer not evidence of discriminatory motivation where withdrawal because vice-president felt personally insulted)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) **250 NLRB No. 133**
(violation where group leader was discharged one hour after presenting his supervisor with U literature, and reasons for discharge given by E were shifting and pretextual)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(discharge of Ee to whom E attributed offensive conduct leading to his discharge, unlawful, where Ee had been object of extensive ULPs by E which coincided with similar ULPs directed against fellow Ees, and discharge of Ee was merely culmination of efforts to mute Ees who, by their protected activities, were source of irritation to E, and E failed to proffer convincing reasons for discharge; while Ee's pre-discharge conduct is not condoned, E will not be allowed to rely on such conduct since, but for E's ULPs, it would not have occurred)

Brooks Cameras, Inc. **250 NLRB No. 116**
(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

Clayton Construction Corporation **250 NLRB No. 121**
(violation by discharge of U steward for protesting work assignment as contrary to contract)

E. A. Nord Company **250 NLRB No. 068**
(discharge of Ee because of his expressed intent to file contractual grievance unlawful, conduct was concerted since it could establish precedent for other Ees)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(discharge of U adherent, unlawful, where for his defense of U in argument in view of E's hostility towards U and U activities)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(discharge of U supporter and member of U organizing committee assertedly for his misconduct, violative where misconduct was provoked by E and was not so serious as to warrant denial of reinstatement)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(discharge of Ee, assertedly because of seasonal decline in business and lack of work, unlawful, where E manifested animus towards unionization of Ees, E admitted to Ee that he was being discharged because he signed U card, and E had learned of Ee's U activity through widespread coercive interrogation of Ees)

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(U's conduct in causing discharge of Ees, and E's discharge of Ees at U's request, unlawful, where U steward in requesting discharges was motivated by harassment flowing from Ees' continual accusation of steward's failure to adequately perform his steward's duties, their insistence on prompt grievance meetings, and attempt to unseat him as steward; moreover, even if no intraunion retaliation motivated steward in demanding discharges, but only that personal harassment was no longer bearable, U's demands for discharges would nevertheless be unlawful)

Clinton Inn **249 NLRB No. 022**
(discharge motivated by Ee's U activities rather than his alleged unsatisfactory performance, in view of inconsistencies in E's *business reasons* for discharge and fact that discharge occurred 3 days after supervisor admittedly saw Ee sign U authorization card and that E exhibited strong animus toward U and its adherents)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation where Ees who were outspoken in their demand for higher pay and better conditions of employment, were replaced while on authorized sick leave and were subsequently denied reemployment; E was motivated not by business necessity but rather by Ees' protected activities)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(discharge of 4 out of 10 Ees in unit, violative, in view of timing of discharge soon after supervisor became aware of R ptn; the abruptness of discharge in middle of workshift, and accompanying ULPs)

K & B Mounting, Inc. **248 NLRB No. 071**
(violation where E discharged Ee because of its belief that she had engaged in U activities)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(discharging Ee assertedly for his tardiness, absenteeism, and unreasonable demand for individual contract, violative, when E had rejected Ee's demands for improvements of wages, pensions and health benefits, had forbidden him to involve other Ees or to seek U assistance in regard to his demands, and discharged Ee only when he insisted that he would pursue the course of concerted action he had outlined contrary to E's order)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**
(discharge of U steward for questioning E's change in practice by denying unit member sandwich at end of 8-hour shift held discrimination against steward (as well as other Ees) to chill protected U organizational activity)

B. N. Beard Company **248 NLRB No. 016**
(constructive discharge of Ee to whom E offered wage rate lower than that provided for in U contract, unlawful, where Ee quit rather than relinquish statutory right to be paid in accordance with contract; fact that Ee intended to leave E's employment in future is no defense where decision to quit was hastened by his being compelled to accept lower wage rate contrary to his statutory right)

Leeson Electric Corporation **247 NLRB No. 203**
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

Pay 'N Save Corporation **247 NLRB No. 184**
(suspension and discharge of Ees for wearing U buttons on their store jackets, unlawful, since right to wear buttons is legitimate form of U activity, and there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

The Saloon, Inc. **247 NLRB No. 156**
(discharge of Ee, unlawful, in view of its timing close to Ee's emergence as U proponent, E's resolve to rid itself of U, Ee's strong skills in his job, and implausibility of E's witnesses concerning timing of discharge, of decision to give Ee raise, and of hire of his replacement)

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center **247 NLRB No. 136**
(discharge of economic strikers for persisting in striking in support of their bargaining agent, unlawful)

Anco Insulations, Inc. **247 NLRB No. 081**
(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(even assuming E had business reason for reduction of truck routes, selection of drivers to be terminated violative, where each discharged driver was U supporter, E knew drivers were U adherents and discharges were not in accordance with seniority)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(discharge of known U adherents for various asserted reasons, unlawful, where Ees were experienced and had good work records, discharges occurred shortly after Ees engaged in open U activity, Ees were treated in disparate manner inasmuch as other Ees were not disciplined for same conduct, and asserted reasons for discharges were pretexts with real reason being Ees' U activities)

Blaw-Knox Foundry & Mill Machinery **247 NLRB No. 36**
(discharge of probationary Ee for protected concerted activity of joining co-worker in her complaint concerning offensive touching of her person by supervisor, unlawful)

Texas Instruments Incorporated **247 NLRB No. 037**
(discharges based on E's invalidly applied dissemination of classified material rule, violative, since Ees were penalized for asserting their statutory rights by publishing confidential area wage survey; application of rule interfered with those rights and tended to inhibit Ees' protected activity)

Goodyear Tire & Rubber Company **JD-630-80**
(termination of Ee after being admonished to curtail his open association with U organizers at plant, violative)

Evans Plumbing Company **JD-(ATL)-15-80**
(discharge of Ees who questioned E about his failure to send payments to U's vacation fund as required in contract, violative)

Browning-Ferris Industries of Ohio and Michigan, Inc. **JD-(SF)-313-80**
(discharge of U steward and other Ee not unlawful, notwithstanding fact that U steward was in process of attempting to secure paycheck for other Ee at time of discharges, where Ees invited E outside to fight, repeatedly threatened to beat him up and persisted in obscene threats and gestures)

Taylor Implement Division, Pittsburgh Forgings Company **JD-474-80**
(Ee's suspension and discharge violative where reason was not, as contended, his parking his automobile in unauthorized location but was, rather, his active participation in U's second effort to represent Ees after an election loss)

Round Table Enterprises Inc. t/a Thrift T Mart **JD-(NY)-62-80**
(discharge of U activist violative, in view of supervisor's statement to another Ee that *now we would have no more worries about the union*)

J. Teixeira Construction, Inc. **JD-(SF)-265-80**
(discharge of Ee who protested E's failure to pay him for *stand by* time as provided under contract, violative)

Chipmore Manufacturing Co., Inc. **JD-432-80**
(discharge for refusing to work overtime unlawful, since discharges were connected with concerted protected activities in which both Ees had taken part, namely *sick out* in protest against making previously optional overtime mandatory, and with their U activities as well)

Falconer and Sons **JD-(SF)-232-80**
(discharge and refusal to rehire Ee because he refused to comply with E's condition that he resign his position as shop steward and because of his activities as shop steward, unlawful)

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

U. S. Oil & Refining Company **JD-(SF)-116-80**
(discharging Ee in retaliation for U's pressing a claim for a change in his seniority status under bargaining agreement, unlawful)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(discharges for U-instigated concerted refusal to work overtime, unlawful)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
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World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(discharge unlawful where E was more concerned with Ee's involvement and leadership potential in U organizing effort than with trivial incidents asserted by E as cause for discharge)

5073-2200—Cont.

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(discharge of Ee organizer for U assertedly because business was slow, violative, where shortly after the discharge E fired another Ee, not involved in U activity, to cover up termination of U organizer, and subsequently hired additional four Ees w/o recalling any of the discharged Ees)

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**
(discharge of U adherents under newly promulgated 10% absenteeism rule, unlawful notwithstanding discharge of nonadherents also, in view of abruptness and timing of discharges during U campaign, disparate application of rule to U adherents, and lack of prior warnings)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(discharge of Ee for conduct at E-Ee meeting violative as Ees were discussing employment terms with E)

Anserphone, Inc. v. N.L.R.B. **632 F.2d 4 (C.A. 6, 1980)**
(discharge of Ee violative, where despite her conflicts with fellow workers and fact that she was subject to discharge for long period prior to actual discharge, circumstances support conclusion that timing of her discharge was more a result of her U activity than her work performance)

N.L.R.B. v. Publishers Printing Company, Inc. **625 F.2d 746 (C.A. 6, 1980)**
(discharge for soliciting U cards, unlawful)

N.L.R.B. v. Publishers Printing Company, Inc. **625 F.2d 746 (C.A. 6, 1980)**
(discharge allegedly for dual employment unlawful where dual employment had been knowingly tolerated until dischargee became involved in U activities)

Northern Telecom, Inc. v. N.L.R.B. **618 F.2d 421 (C.A. 6, 1980)**
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

N.L.R.B. v. Memphis Furniture Manufacturing Company **616 F.2d 964 (C.A. 6, 1980)**
(discharging shipping clerk because of his U association and because he had filed ULP charge against E for E's interrogating him about his conversation with U representatives, violative since, contrary to E's contention, substantial evidence supports Bd's finding that shipping clerk was nonsupervisory Ee)

Huron Copysette, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**
(violation in view of evidence that termination of Ee was prompted by anti-U reasons, rather than valid considerations as E contended)

N.L.R.B. v. Mutual Maintenance Service Co., Inc. **632 F.2d 33 (C.A. 7, 1980)**
(although ct affirmed Bd's finding that U adherent was discharged because of his U activities, ct denied portion of Bd order concerning reinstatement of Ee where Ee defrauded federal government and former E of unemployment compensation benefits, notwithstanding that current E was aware and even encouraged this Ee to work for E under alias while collecting unemployment compensation)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**
(discharge of chief steward, a militant member of U negotiating committee, assertedly because of his instigation of and participation in *illegal work stoppage* and his picket line misconduct, violative, where about six weeks prior to steward's discharge E forgave any wrongdoing in steward's behavior and there was no evidence that steward committed strike misconduct)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**
(discharge of zealous supporter of picketing activities, four days after settlement of the strike, assertedly because of her leading *illegal work stoppage* and participating *in picket line misconduct,* violative in view of evidence that Ee did not engage in significant strike misconduct and that E condoned Ee's pre-strike activities about six weeks prior to her discharge)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(violation where moving cause for discharge of instructor was his remarks to student group regarding ongoing labor dispute rather than for disparagement of E, as alleged)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(violation where moving cause for discharge of instructor was continuation of their U activities following faculty strike rather than under-enrolled classes, as alleged)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(discharge for U sympathies, unlawful)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(discharge of Ee for engaging in protected activity of displaying sign urging boycott of E's product, unlawful; E's contention that activity was unprotected because it was motivated by fear of picketing strikers rathr than by commitment to making *common cause* with them rejected; even if fear played a part in decision to display sign, it was not the sole motivating factor since Ees were also motivated by desire to encourage strikers)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(discharge of U members to prevent economic loss by turning project into nonU job and avoid paying U wage scale and benefits, unlawful)

5073-2400 For refusing, to join or support favored union

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

Siro Security Service, Inc. **247 NLRB No. 157**

5073-3300 For striking or during strike

B. N. Beard Company **248 NLRB No. 016**
(discharge of ULP strikers as of time they went out on strike, unlawful, where E did not offer any of striking Ees reinstatement; in fact, E told Ees that they would be discharged and not reinstated if they struck and later told newsman strikers were discharged and, in combination with these actions, E changed locks on plant's doors, requested return of Ees' keys, and withdrew recognition from Us representing Ees)

Triple A Machine Shop, Inc. **JD-(SF)-220-80**
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

5073-3325 Non-ULP strike

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(E who told striking Ees that it was firing them, handed out *final paychecks* in middle of pay period and ordered them off premises because they were no longer Ees, violated Act; notwithstanding Ees later met with E, terminated strike and returned to work)

5073-3325-5000 Strikers may not be discharged prior to replacement

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(economic striker whose job has not been permanently promised to replacement at time striking Ee is discharged is entitled to reinstatement; determination of whether job has been permanently promised is question of fact for ct review to see if it is supported by substantial evidence)

5073-3350 Pursuant to no-strike agreement

C. H. Heist Corporation **250 NLRB No. 185**
(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

5073-3367 Economic strike

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(discharge of economic strikers prior to replacement, unlawful)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(discharge of economic strikers for not abandoning strike, unlawful)

Excavation-Construction, Inc. **248 NLRB No. 081**
(discharge of Ees who participated in 1-day work stoppage in support of U's bargaining position violated Act as this is strike and not *intermittent work stoppage* which would be unprotected)

Quadee Rubber Company, Division of Minnesota Rubber Company **JD-407-80**
(discharge of economic strikers, unlawful; no evidence of alleged strike misconduct)

5073-3367—Cont.

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired later, would be as new Ee held violative, since action interfered with Ees' rights)

5073-3375 ULP strike

Sav-On Drugs, Inc. **253 NLRB No. 045**
(discharge of Ees striking in protest of illegal termination of 2 fellow Ees because of their U activities, violative)

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(E who sent telegram to ULP strikers informing them of their discharges violated Act, notwithstanding 5 days later he sent another telegram rescinding discharges)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(violation where, pursuant to request of U to enforce U-security clause, E discharged for nonpayment of dues and initiation fees to U Ees who were not in bargaining unit represented by U and thus not covered by E's contract with U; E's purpose was to encourage membership in this U and discourage membership in another U which had demanded recognition as representative of these Ees)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(discharge of Ees for participation in lawful strike violative)

Bide-A-Wee Home Association **248 NLRB No. 110**
(discharge of Ees engaged in protected strike which E termed U-called illegal strike, unlawful)

Andersen Sand & Gravel Company **JD-655-80**
(discharge of strikers, unlawful, since work stoppage protected ULP strike, E's contention unprotected since in contravention of no-strike agreement, rejected, where asserted no-strike agreement was in contract which expired by its own terms)

Arland R. Wells, Jr., d/b/a Strimel Plumbing Company **JD-836-79**
(discharge of Ees for concerted refusal to work until E responded to Ees' demand for recognition of their chosen bargaining representative, unlawful)

5073-3387 Sympathy strike

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(discharge of 4 Ees and disciplinary suspensions of 20 others, for excessive unexcused absences, unlawful, where in each instance unexcused absences charged included days when Ees refused to, cross picket line of U representing other Ees at plant)

5073-4300 For not signing union dues checkoff authorization

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

Visu-Craft By H.B.S., Inc. **JD-887-79**
(discharge of Ee employed at effective date of contract pursuant to security clause which did not provide grace period before persons already employed by E at effective date could be compelled to join U, unlawful)

5073-5200 Per se violation in application of discriminatorily promulgated plant rule

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

5073-5300 For refusing to work assigned hours

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's discharging Ees for refusing to work overtime, not unlawful, notwithstanding fact that U objected to absence rule, where E's institution of absence rule was found to be lawful)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

5073-5400 For refusal to accept unlawful conditions

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(termination of Ees who refused to accept E's unlawfully unilaterally imposed conditions of employment, violative)

J. Teixeira Construction, Inc. **JD-(SF)-265-80**
(discharge of Ee who protested E's failure to pay him for *stand by* time as provided under contract, violative)

5073-6000 Familial relationship to union activist, office holder, steward, etc.

Ahstabula Forge, A Division of ABS Industries, Inc. **JD-388-80**
(E's discharge of Ee and subsequent refusal to reinstate him because his father was U president, unlawful)

The Royal General Company **JD-17-80**
(discharge of Ee because he was brother of U adherent, unlawful)

5073-6600 Mass discharge

Comgeneral Corporation **251 NLRB No. 069**
(mass discharge unlawful in view of timing immediately after upsurge of U activity, animus, and flimsy excuse, together with clear admissions of wrongdoing by supervisors who administered the ULPs)

5073-6800 To prevent employees from voting in election

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

5073-7100 Pursuant to unlawful no-solicitation rule

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(reprimanding Ee who had solicited another Ee who was on work time, unlawful, since was addressed only to prime U adherent and was intended more to impede her U activities than to maintain production and order in restaurant; further, reprimand was to enforce unlawful rule)

5073-7200 To avoid dealing with union

National Car Rental System, Inc. **252 NLRB No. 027**
(systematic exclusion of E's garage Ees and mechanics at its closed truck rental facility for consideration for employment at E's relocated facility, violative where E had voiced desire w/i ranks of management to have nonU operation at relocated site)

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

Atlan Inc. **JD-890-79**
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5073-7700 Pursuant to illegal union-security agreement

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(violation, where Ees who were reluntant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

Visu-Craft By H.B.S., Inc. **JD-887-79**
(discharge of Ee employed at effective date of contract pursuant to security clause which did not provide grace period before persons already employed by E at effective date could be compelled to join U, unlawful)

5073-8000 Pursuant to union demand because of employees opposition to union officer

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved

5073-8000—Cont.

permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

5073-8300 Pursuant to union demand because of employees lack of union membership

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

Standard Bridge Corporation **JD-174-80**

(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

5073-8600 Pursuant to Union demand because of employee's dues delinquency

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**

(where E discharged Ee pursuant to U's request because she was 6 months behind in payment of dues it did not violate Act because although U had failed to give Ee adequate notice of or opportunity to pay her arrearages E had no knowledge of this and Ee did not protest discharge to E)

5073-8700 To discourage support for disfavored union

Sentry Investigation Corp. **249 NLRB No. 130**

(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Suburban Ford, Inc. **248 NLRB No. 051**

(discharge of U adherent salesman for *disloyalty* because he tried to explain why he loaned demonstrator to customer, held violative where Ee was experienced salesman with unexceptionable performance record and E was attempting to harass Ee and cool ardor of all Ees for U representation)

5073-9600 As result of change in operations

Island Typographers, Inc. **252 NLRB No. 003**

(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

5073-9700 Resulting from reassignment of work due to jurisdictional dispute

Sullivan Transfer Co. **247 NLRB No. 117**

(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

5079 REFUSAL TO REINSTATE

5079-0100 Generally

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**

(where Ee had been discriminated against on 2 occasions valid offer of reinstatement must include reassurance that no further discrimination would occur)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. **JD-261-80**

5079-1400 Following lay-off

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**

(reinstatement of discriminatorily laid-off Ee to night shift when he had formerly worked on day shift, unlawful)

Norym Company, Inc. **JD-847-79**

(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. **620 F.2d 1120 (C.A. 5, 1980)**

(violation where antiU E failed to rehire laid-off leading U supporter because of U activities rather than for not completing job assignment as alleged; E had decided previously that it could not afford to bring back Ees who were *in on* U and had thus hired two new Ees while failing to recall proU Ee)

5079-2800 Non-ULP strikers

W. G. Best Homes Corporation **253 NLRB No. 123**

(no obligation to reinstate Ees who participated in economic strike and were subsequently terminated when E subcontracted their work for economic reasons, since strike not converted into ULP strike by E's failure to bargain prior to subcontracting as U never requested bargaining on issue)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**

(refusal to reinstate 2 economic strikers immediately, unlawful, where unconditional offer to return to work was made on their behalf and E failed to meet its burden of justification for its failure to offer one Ee employment or for delay in reinstating other Ee)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**

(E's failure to offer position to former economic striker, unlawful, where E filled position with nonstriker after unconditional offer to return to work made on behalf of strikers)

C-F Air Freight, Inc. **247 NLRB No. 060**

(failure to recall strikers to work assertedly because of financial losses at E's facility, unlawful, where E unlawfully threatened to close plant, contention that decision to do so was made before U activity began was patent contrivance, E made statement to Ees that if they unionized E *would padlock door* and expressed antagonism toward U, and disparate nonclosure of another facility was based on lack of U activity threat)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**

(E's defense to its failure to offer reinstatement to economic strikers on ground that it was having trouble returning to full operations in wake of strike and caused delay in its ability to offer reinstatement, rejected, since merits of E's justification had previously been decided by Bd and ct against E)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**

(E's contention that it should be obligated to offer reinstatement only to those economic strikers who responded to its letter regarding reinstatement, rejected, where U's offer to return to work was bona fide and unconditional, E had no substantial business justification for failing to reinstate strikers, E's letter merely inquired into strikers' interest in future job openings and, consequently, strikers were under no obligation to respond to E's letter)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**

(economic striker does not waive his right to be offered reinstatement due to his failure to respond to E's letter which did not offer reinstatement but merely inquired into strikers' interest in future job openings)

5079-2813 Where replaced

Associated Grocers **253 NLRB No. 005**

(no conversion of economic strike to ULP strike where ULPs committed by E did not prolong strike)

Associated Grocers **253 NLRB No. 005**

(temporary strike replacements' status converted to permanent status when E communicated such change to replacements who then acknowledged such change in writing; however, as to Ees hired thereafter as temporary and received no assurance that their employment was permanent regardless of intention of E, they retained their temporary status)

Roberts Oldsmobile, Inc. **252 NLRB No. 035**

(failure to reinstate economic strikers upon their offer to return to work, not violative where striking Ees' offer to return to work was conditioned on reinstatement of certain Ee and discharge of strikers' replacements, and U's offer on behalf of strikers to return to work was premised upon E's agreeing to $200 weekly floating guarantee)

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

(discharge of economic strikers prior to replacement, unlawful)

Owen Joint Corporation **248 NLRB No. 076**

(violation where E refused to reinstate economic strikers, as their jobs for which they were qualified became available, following their unconditional offer to return to work)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**

(existence of bona fide replacements for economic strikers did not justify E's failure to offer strikers positions available, since economic striker is entitled to reinstatement if and when a job for which he is qualified becomes available; fact that his old job is occupied is no excuse for refusing to make reinstatement offer)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**

(E was obligated to offer reinstatement to economic strikers where E failed to carry burden of showing that legitimate and substantial business reasons, including their replacement, justified its refusal to do so)

5079-2813—Cont.

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**

5079-2819 To former or substantially equivalent position

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(discriminatee, who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(where subject of returning to work is put as question to Ee and not as offer, burden is not on discriminatee to inquire whether or not offer was to reinstate him to his former position inasmuch as offer does not constitute unconditional offer of reinstatement)

Routh Packing Company, Inc. **247 NLRB No. 053**
(lesser jobs filled by temporary and seasonal workers held not substantially equivalent to strikers' former jobs so that failure to offer them to strikers not violative)

Graphic Components, Inc. **JD-377-80**
(refusal to reinstate economic striker, not unlawful, where striker would have been able to fill only temporary job that was not substantially equivalent to job striker previously held)

5079-2825 Except as new employees

Freezer Queen Foods, Inc. **249 NLRB No. 045**
(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it was not possible to achieve its purpose by tolling probationary period during strike, rejected)

Service Garage, Inc. **247 NLRB No. 115**

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired later, would be as new Ee held violative, since action interfered with Ees' rights)

5079-2828 Job absentees during strike

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(E's reinstatement of nonstriking Ees who were absent from work during part or all of economic strike period, and failure to offer such jobs to strikers awaiting reinstatement, held, lawful, where E offered reinstatement only to absentee individuals who supplied satisfactory proof that their absence was due to factors which would have been acceptable to E prior to strike and, hence, there was no evidence that E extended unlawful preference to individuals in the group as compared to strikers)

5079-2831 Unconditional offer to return to work

Kuno Steel Products Corp. etc. **252 NLRB No. 127**
(Es failed to rebut GC's *prima facie* case establishing that Es did not meet their obligation to reinstate economic and unfair labor practice strikers to conditions current at time of strike by showing substantial business justification and thereby violated Act)

Roberts Oldsmobile, Inc. **252 NLRB No. 035**
(failure to reinstate economic strikers upon their offer to return to work, not violative where striking Ees' offer to return to work was conditioned on reinstatement of certain Ee and discharge of strikers' replacements, and U's offer on behalf of strikers to return to work was premised upon E's agreeing to $200 weekly floating guarantee)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(discriminatee, who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

Owen Joint Corporation **248 NLRB No. 076**
(violation where E refused to reinstate economic strikers, as their jobs for which they were qualified became available, following their unconditional offer to return to work)

Routh Packing Company, Inc. **247 NLRB No. 053**
(refusal to reinstate economic strikers unconditionally offering to return to work, unlawful)

5079-2837 Under terms of strike settlement agreement

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(in view of ct remand, Bd applied law as it stood before Bd Fleetwood and Laidlaw decisions issued, and affirmed its original decision that E's overall administration of strike settlement agreements with Us was lawful where agreements granted economic strikers greater reinstatement rights than those ordinarily accorded strikers under then-existing and applicable labor laws, and terms of agreement did not *discriminatorily* affect one group or classification of former strikers as opposed to other strikers or to nonstriking Ees)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(contrary to E's contention that any breaches by it of strike settlement agreements with Us were nothing more than violations of U's private contract rights, Bd held such breaches were w/i cognizance of Act and must be remedied in the public interest; accordingly, since E's violations of agreements denied reinstatement of economic strikers who had done no more than engage in protected concerted activity, E's conduct was unlawfully discriminatory)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(E held to have unlawfully breached terms of strike settlement agreements by promoting junior active Ees when senior former strikers were awaiting reinstatement to those jobs, and by personnel adjustments involving certain types of job transfers)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(E's reinstatement of nonstriking Ees who were absent from work during part or all of economic strike period, and failure to offer such jobs to strikers awaiting reinstatement, held, lawful, where E offered reinstatement only to absentee individuals who supplied satisfactory proof that their absence was due to factors which would have been acceptable to E prior to strike and, hence, there was no evidence that E extended unlawful preference to individuals in the group as compared to strikers)

5079-2850 Failure to honor promise to reinstate replaced strikers as vacancies occur

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(refusal to reinstate any of five economic strikers on preferential hiring list to available position, not violative since none of the strikers were qualified to assume the position)

5079-2875 Not unlawful absent discriminatory motivation

Associated Grocers **253 NLRB No. 005**

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center **247 NLRB No. 136**
(E's contentions in defense of its failure to reinstate discharged strikers that it was economically justified and operated normally w/o them found contradicted by significant increase in costs for overtime paid remaining Ees and hiring of nonunit Ees whose primary function was same as that of strikers)

5079-2881 Disqualified by strike misconduct

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

Midwest Solvents, Inc. **251 NLRB No. 171**
(refusal to reinstate three economic strikers allegedly for egregious strike misconduct violative, where first striker's isolated threat to customer making deliveries to *blow up, or burn up* his combine w/o attempt to interfere with deliveries held type of minor misconduct Congress contemplated in providing right to strike; second striker's isolated mild intimidation of strike breaker to *watch* himself, that *some of the boys might get rowdy* held impulsive trivial misdeed; and third striker's parking his car in authorized parking place where it inconvenienced customer did not warrant job loss)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(although Ee may actually have engaged in misconduct he or she may not be denied reinstatement absent showing that misconduct was so violent or of such serious nature as to render Ee unfit for future service)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(mere verbal abuse, unaccompanied by any physical actions or gestures that add meaning to words, does not arise to level justifying disqualification from reinstatement)

Triple A Machine Shop, Inc. **JD-(SF)-220-80**

5079-2900 Preconditions to reinstatement

Roberts Oldsmobile, Inc. **252 NLRB No. 035**
(E's proposed strike settlement agreement not violative of 8(a)(3) nor 8(a)(5) notwithstanding that the proposal included provision for withdrawal of ULP charges pending as result of the strike, where contrary to GC's contention there is no evidence that E established, as unyielding term of reinstatement of strikers, that ULP charges be withdrawn by U or that E insisted on such withdrawals as condition precedent to resumption of bargaining)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(discriminatee, who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

Routh Packing Company, Inc. **247 NLRB No. 053**
(no duty to reinstate Ee not shown to have made unconditional offer to return to work)

5079-4200 ULP strikers

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E's economic situation may have justified its proposing reduction in wages, it was not established that economic necessity justified its refusal to reinstate strikers except on its own terms; E's position that to reinstate strikers at higher rates was unrealistic was w/o merit, since mutually acceptable agreement may have been reached if E had met its statutory obligation)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E could avoid such a situation by discharging strikers and replacing them with individuals willing to work at lesser rates, such conduct would constitute a unilateral action frustrating negotiations and an evasion of duty to bargain on questions which are subject to compulsary bargaining)

Pease Company **251 NLRB No. 080**
(reinstatement of ULP strikers to E's non-U plant at lower wage, with different duties, and further commuting distance, unlawful, where E's failure to fully reinstate them was motivated by desire to deny them U representation)

Burns Motor Freight, Inc. **250 NLRB No. 045**
(failure to reinstate ULP striker, unlawful, where job available for which he was qualified and other strikers with less seniority recalled)

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(violation where E refused to reinstate Ees discharged unlawfully for protected concerted activity who subsequently engaged in ULP strike because of discharges)

5079-4201 Generally

Inta-Roto, Inc. **252 NLRB No. 111**
(ULP strikers who were unlawfully notified that they had been permently replaced found not violatively discharged because despite this notification, no evidence to show that request for reinstatement would be *utterly futile* and Ee required to request to be reinstated)

5079-4217 Where replaced

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(E's failure to terminate replacements and reinstate ULP strikers upon their unconditional request for reinstatement, unlawful, notwithstanding at time of request for reinstatement E believed strikers were economic strikers)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(*upon unconditional offer to return to work, ULP strikers are entitled to immediate reinstatement to their former jobs or if such jobs no longer exist to substantially equivalent positions; further, burden is upon E to offer immediate and unconditional reinstatement, even if striker replacements must be terminated to make room for returning strikers*)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(permanently replacing and refusing to reinstate ULP strikers, unlawful)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(failure to reinstate striker assertedly because no work was available held violative where E's *alter ego* (reactivated to avoid U) had available work; *alter ego* had crew of nine Ees doing unit work after strike had ceased)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(where U struck principally over E's unlawful unilateral discriminatory changes, replaced striking Ees held entitled to reinstatement even if alleged ULP was only one of many causes of the strike)

5079-4233 Rehired as new employees

Weather Tec Corporation v. N.L.R.B. **626 F.2d 868(T) (C.A. 9, 1980)**
(E's offer to reinstate ULP strikers who applied for new employment held violative)

5079-4250 Unconditional offer to return to work

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

Bide-A-Wee Home Association **248 NLRB No. 110**
(violation by refusal to reinstate strikers who were discharged while engaged in protected strike and subsequently replaced, upon their appearance at E's facility and announcement that they were ready to work)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(offer by U on behalf of all ULP strikers sufficient)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(once offer made to return to work by strikers, burden shifts to E to reinstate them)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(refusal to reinstate replaced ULP strikers after they made unconditional offer to return to work, unlawful)

Circle X Corporation **JD-(SF)-222-80**
(refusal to reinstate U campaign leader and member of negotiating committee to former job upon unconditional offer to return towork after ULP strike and offering her only more onerous position, instead, unlawful)

Lucy's, Inc. **JD-832-79**
(E's refusal to reinstate ULP strikers unlawful, where strikers had made unconditional offer to return to work)

Weather Tec Corporation v. N.L.R.B. **626 F.2d 868(T) (C.A. 9, 1980)**
(E's failure to reinstate economic strikers despite availability of jobs converted strike to ULP strike, strikers thereby became discriminatees and E's failure to einstate them violated Act)

5079-4283 Disqualified by strike misconduct

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to offer reinstatement to ULP strikers, notwithstanding there was some violence on picket line, violative, where no showing that they engaged in unprotected activity warranting their termination)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(where Ee's picket line misconduct insufficient to justify discharge, E's refusal to reinstate ULP strikers, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to reinstate not unlawful where E did not condone picket line misconduct and misconduct of such nature as to remove perpetrators from protection of Act)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(involvement in exchange of words and threats with nonstriker not bar to reinstatement and backpay where nonstrikers were agressors and strikers act was in self defense, further, incident too minor to bar reinstatement on backpay where no blows struck, and no damage to property or person)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(ULP striker spitting at foreman and using profane language towards superintendent not sufficient misconduct to bar reinstatement, particulary since ULP striker)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(ULP striker striking side of non-striking Ee's car as non-striking Ee passing through gate of E's plant)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

Voss Steel Corporation **JD-216-80**
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

5079-4291 Availability for work

Birmingham Ornamental Iron Company **251 NLRB No. 115**

(termination of ULP striker pursuant to three-day absence rule, not unlawful, where striker travelled for several days making no effort to contact E or U to ascertain if his employment in which he claimed to retain continued interest was still subject to strike; although E has initial duty to notify ULP striker of date upon which he should return to work, under these circumstances some responsibility remains with Ee)

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(requiring ULP strikers to fill out availability for work forms as precondition to reinstatement violative)

5079-4500 Following discharge

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**

(E's refusal to reinstate Ee discharged at U's request for nonpayment of dues not violative where U's request for termination had not been rescinded and E had no knowledge that U's original request was violative)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**

(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**

(discharge and failure to reinstate Ee because of his activities as U steward violative)

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(discriminatee who was driver not reinstated since E's insurance carrier subsequent to discharge excluded from liability coverage any vehicle driven by discriminatee)

Routh Packing Company, Inc. **247 NLRB No. 053**

(no duty to reinstate picketer who was former Ee and considered himself on furlough but was not Ee when strike began)

Western Clinical Laboratory, Inc. v. N.L.R.B. **633 F.2d 225(T) (C.A. 9, 1980)**

(substantial evidence supported Bd's finding that Ee was competent medical technologist and entitled to reinstatement)

5079-4900 Strikers in unprotected strike

St. Regis Paper Company v. N.L.R.B. **623 F.2d 487 (C.A. 6, 1980)**

(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

5079-8600 Following quit

Charles Batchelder Company, Inc. **250 NLRB No. 009**

(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**

(violation where E threatened with discharge, and delayed reinstatements of, several Ees who were engaged in ULP strike)

5084 FAILURE TO OR DELAY IN RECALL

5084-3300 Laid-off employee

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

(recall on basis of U adherence after layoff which was motivated by E's antagonism to U campaign, unlawful)

Norym Company, Inc. **JD-847-79**

(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

5084-6700 Economic strikes

Kuno Steel Products Corp. etc. **252 NLRB No. 127**

(E's defense to its refusal to offer strikers reinstatement is that U's offer to return to work is untimely, is without merit where unremedied ULPs committed by Es prolonged strike; U was involved in protracted Bd proceeding and offer to return to work made just over a month after ct decision)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**

(refusal to reinstate 2 economic strikers immediately, unlawful, where unconditional offer to return to work was made on their behalf and E failed to meet its burden of justification for its failure to offer one Ee employment or for delay in reinstating other Ee)

Voss Steel Corporation **JD-216-80**

(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**

(refusal to reinstate any of five economic strikers on preferential hiring list to available position, not violative since none of the strikers were qualified to assume the position)

5084-7500 ULP strikers

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

(E's failure to terminate replacements and reinstate ULP strikers upon their unconditional request for reinstatement, unlawful, notwithstanding at time of request for reinstatement E believed strikers were economic strikers)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

(*upon unconditional offer to return to work, ULP strikers are entitled to immediate reinstatement to their former jobs or if such jobs no longer exist to substantially equivalent positions; further, burden is upon E to offer immediate and unconditional reinstatement, even if striker replacements must be terminated to make room for returning strikers*)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

(E's delay in reinstating striker who had been on U's negotiating committee after end of strike and upon recall assigning him to lesser paying job, unlawful, absent proof job had been abolished by subcontracting during strike; further, any subcontracting was accomplished w/o bargaining with U and hence violative of Section 8(a)(5))

Burns Motor Freight, Inc. **250 NLRB No. 045**

(E's failure to reinstate ULP striker, not unlawful, where neither striker's former position nor substantially equivalent position available, and no contention E discriminatorily abolished striker's job)

5090 UNION SECURITY REQUIREMENTS

5090-0100 Generally

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**

(no authority exists for proposition that E, in compliance with U security provision, has statutory duty, absent valid request, to notify U when new unit Ees are either hired or when they complete their initial 30 days of employment)

5090-3300 Types of union-security provisions or practices

5090-3380 Effect under 14(b) of state regulation of membership requirements

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) **252 NLRB No. 181**

(R fee clause requiring Ees who are not U members to pay pro rata service fee at rate less than monthly dues, though permissible under 8(a)(3) is violative of state laws enacted pursuant to Sec. 14(b) and cannot be enforced through invocation of N.L.R.B.)

5090-5000 Prerequisites for validity of union-security requirements

5090-5028 Appropriate unit considerations

Andersen Sand & Gravel Company **JD-655-80**

(E which was engaged in manufacture of prefabricated structual concrete signing contract with Laborers in regard to representation of Ees in new wet concrete operation, unlawful, since E had obligation to bargain with Teamsters where Ees in new operation part of existing unit represented by Teamsters; inasmuch as work was performed in same plant with same tools, basically same wages, under same general supervision and working conditions; nor was operation result of establishment of new division where operation neither physically nor functionally distinct, and E's proposal for new division during bargaining had been withdrawn)

5090-5033 Majority status of contracting union at time of execution

Campus Housekeeping, Inc. **252 NLRB No. 072**

(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

(where E recognized minority U and executed contract containing U security clause it violated Act as existence of such provision discriminatorily encourages Ees to join minority U)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**

(execution of contract containing U-security clause when U did not represent uncoerced majority of Ees, violative, notwithstanding subsequent deletion of such clause)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

5090-5033—Cont.

(E and assisted U's inclusion of U security provision in their agreement, not unlawful, notwithstanding agreement itself was unlawful because U lacked majority status at time of execution, where there was no proof that the provision was ever enforced or any Ee discriminated against by its application)

Venture Stores, Inc. **JD-81-80**
(execution of contract containing U-security clause with assisted minority U and deduction of dues pursuant thereto, unlawful)

5090-6700 Execution or maintenance of invalid union-security agreement

5090-6720 Contract with assisted union

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

Baine Service Systems, Inc. **248 NLRB No. 087**
(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

Venture Stores, Inc. **JD-81-80**
(execution of contract containing U-security clause with assisted minority U and deduction of dues pursuant thereto, unlawful)

5090-6750 Failure to provide 30-day grace period

Visu-Craft By H.B.S., Inc. **JD-887-79**
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

5090-8300 Illegal enforcement of valid union- security agreement

5090-8307 Extension of contract to nonconsenting employees

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(violation where E applied contract with U security clause covering bargaining unit of P&M workers -- all female -- to male set-up workers -- who were like tool-and-die, rather than P&M, workers -- to encourage male Ees' membership in U representing female Ees and discourage their membership in other U which had demanded recognition as male Ees' representative)

5090-8350 Unauthorized deduction of union dues

American Nurses' Association **250 NLRB No. 175**
(parties did not intend to allow for escape period during interim between agreements, where all dues checkoff authorizations were executed subsequent to effective date of contract)

Siro Security Service, Inc. **247 NLRB No. 157**

5090-8350-5000 After revocation

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(E's continuing to remit dues to U pursuant to checkoff agreement, unlawful, where Ees had revoked checkoff authorizations via letters notwithstanding bargaining agreement required revocations to be on form provided by U; particularly where forms were only available at U headquarters which was inconveniently located and prior to revocation activity Ees were not informed regarding procedures to follow to obtain forms)

5096 HIRING, CLEARANCE AND REFERRAL AGREEMENTS AND PRACTICES

5096-0100 Generally

5096-0114 Not illegal absent actual discrimination

Bechtel Power Corporation **248 NLRB No. 166**
(absent any recall rights and statistical analysis of actual recall of laid-off Ees showing discrimination towards swing shift Ees, either individually or as group, GC failed to sustain burden proving such discrimination by U hiring hall practices, and thus by E)

5096-2500 Types of agreements and practices

5096-2584 Delegation to union of employment control

5096-2584-8000 Employer's responsibility for union's actions

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

6700 INDICIA OF INTENT TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP

6705 ADVANCE INDICATION OF INTENTION TO DISCHARGE

Classic Truck Rental Corp. **251 NLRB No. 056**
(E's filing of notice of arbitration with regard to its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, since E's action was not prompted by Ee's U activities or filing of charges with Bd, where Ee's misconduct on job and disregard for company rules justified E's action)

Classic Truck Rental Corp. **251 NLRB No. 056**
(E's filing of notice of arbitration concerning its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, where E's grounds for discharge were valid; Ee does not insulate himself from discharge for cause simply by virtue of fact that he had engaged in protected activity; misconduct which would justify discharge, absent any protected activity, will also justify discharge despite protected activity)

6708 ANTIUNION ATTITUDE OF EMPLOYER

6708-0100 Generally

The Martin-Brower Company v. N.L.R.B. **623 F.2d 1161 (C.A. 6, 1980)**
(supervisors' favorable action in behalf of dischargee, despite their knowledge of his U activity, demonstrated lack of anti-U animus)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(proper test in determining whether discharge of Ee is ULP is whether anti-U animus was moving cause, and not whether discharge is only partially motivated by anti-U animus; to give rise to ULP *but-for* cause of discharge is required)

6708-0150 Antiunion background alone insufficient to sustain finding of discrimination

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(superintendent threatening jobs of casual Ees unless one casual worker dissuaded another casual from presenting charges to Bd and urging another casual to discourage same Ee from pursuing charges against E before Bd, not unlawful, where casual workers lost nothing through appeals of superintendent and continued working)

6708-3700 Antiunion conduct found in prior Board decisions

Marriott Corporation **251 NLRB No. 180**
(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

6708-5000 Antiunion conduct and remarks subsequent to discrimination

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ees assertedly because of their absences immediately prior to and after vacation period, unlawful, where real motive for discharge was revealed through E's comments to one of the Ees that *all this* would not have happened if Ees had not tried to get U in plant)

6708-6200 Antiunion conduct and remarks prior to discrimination

Brooks Cameras, Inc. **250 NLRB No. 116**
(E showed antiU animus by interrogating Ee as to U leadership and organization among Ees for whom U had demanded recognition, accelerating RIF among them and choosing U activists for RIF, and discharging Ee who threatened to organize another group of Ees)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(discharge of Ee after store he was responsible for was burglarized violative where E had interrogated Ee about signing U card, indicated its intention to use pretexts to fire U activists, was aware that Ee had signed card, assigned Ee additional work, made no attempt to investigate circumstances surrounding burglary and additionally had not fired another Ee for similar negligence which led to major theft)

6710 CONTRASTING TREATMENT

6710-2500 Of discriminatee and other employees

Bethlehem Steel Corporation **252 NLRB No. 138**

(where Ees participated in work stoppage in violation of no-strike provision of contract and E disciplined U official with 10 day suspension and all others with 5 day suspension it violated Act as his punishment based on his position in U)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

(denying reinstated Ee extended leave of absence and terminating her at time other Ees had been granted extended leaves of absence held violative)

Great Dane Trailers Indiana, Inc. **252 NLRB No. 015**

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**

(discharge of known U supporter for sleeping on worktime, not violative notwithstnding contention that E reprimanded rather than discharged one other Ee for sleeping on worktime, where E terminated 34 Ees in past 10 years for sleeping on job, and sleeping on job was against company policy; moreover, U supporter who had not asked for permission as requested by E to take his break in a work area was discovered sleeping in secluded area of plant 10 minutes after break was scheduled to end, and had to be awakened by supervisor)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Southern California Gas Company **251 NLRB NO. 127**

(discharge of Ee who refused to see E's doctor violative where no other Ee was ever terminated for such refusal and discharge occurred less than 2 weeks after Ee was threatened with termination for complaining to U about working conditions)

Swift and Company **250 NLRB No. 152**

(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**

(permanent layoff of U adherent in contrast to brief layoffs of coworkers, unlawful, in view of E's U animus and lack of business justification)

Central Freight Lines, Inc. **250 NLRB No. 063**

(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

Neptune Waterbeds, Inc. **249 NLRB No. 168**

(no violation where active U adherent was discharged for solicitation on E's time, violence toward other Ees, and lateness; although other Ees' work records showed deficiencies, no other Ee was shown to have work-related problems in as many areas as dischargee)

Hedison Manufacturing Company **249 NLRB No. 096**

(allegedly discriminatory conditions imposed on transfer of Ees from their department, which was U stronghold, to other departments in lieu of laying them off, were not imposed on similar transfers of Ees from another department)

Lyman Steel Company **249 NLRB No. 040**

(depriving U advocate of overtime assertedly because his machine had suffered oil leak held violative where other machine operators had suffered oil leaks earlier w/o repercussions from E)

Lyman Steel Company **249 NLRB No. 040**

(discharge of U advocate assertedly because his machine had suffered oil leak held violative where other Ees were not punished for same offense and disparate treatment followed E's threat of reprisal for Ee's U activity)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**

(discharge of Ee after store he was responsible for was burglarized violative where E had interrogated Ee about signing U card, indicated its intention to use pretexts to fire U activists, was aware that Ee had signed card, assigned Ee additional work, made no attempt to investigate circumstances surrounding burglary and additionally had not fired another Ee for similar negligence which led to major theft)

General Meats, Inc. **247 NLRB No. 153**

(having special sign-in-out sheet whenever Ee left for nonwork purposes)

Wolverine Worldwide, Inc. **247 NLRB No. 137**

(disparate administration of disciplinary system where merely arbitrary and not caused by Ees U activities or sympathies, not violative and Ee discharges due to disparate actions also not violative)

Florida Cities Water Company **247 NLRB No. 111**

(where there were 2 probationary Ees who were both U adherents and only 1 was discharged, this does not preclude, under the circumstances, Bd's finding that discharge of one such Ee was violative)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 099**

(refusal to pay benefits to discharged Ee, to whom E promised one-half month's salary as post-termination pay, held violative inasmuch as E treated Ee differently than other discharged Ees because of Ee's expressed intent to seek redress from Bd)

Tartan Marine Company **247 NLRB No. 073**

(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

Anco Insulations, Inc. **247 NLRB No. 081**

(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

Triple A Machine Shop, Inc. **JD-(SF)-220-80**

(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

American Metal Processing Company **JD-159-80**

(discharge of known U organizer allegedly for sleeping on job, unlawful since, under ordinary circumstances, this was not dischargeable offense and a few days later another Ee was caught sleeping while still on the clock, and nothing happened to him)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**

(asserted incidents of misconduct on part of Ees held no defense justifying their discharge where other Ees were routinely *guilty* of similar infractions w/o being disciplined or discharged therefor)

United States Postal Service **JD-(SF)-273-79**

(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

6710-5000 Of union and nonunion employees

Reeves Rubber, Inc. **252 NLRB No. 026**

(issuance of warning notice threatening termination for pro-U solicitation in work area on work time while permitting anti-U solicitation under same circumstances, unlawful)

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. 098**

(where E's relocation of plant was based on legitimate economic reasons and E was under no legal duty to transfer unit Ees to new location, E's failure to transfer unit Ees while transfering non-unit Ees, not violative, notwithstanding that E did not offer legitimate business reasons for its disparate treatment of unit and not-unit Ees; GC did not claim that disparate treatment was illegally motivated, and it is presumed that an action was taken for lawful reasons, absent evidence of illegality)

Retailer's Coupon Redemption Co., Inc. **JD-194-80**

(violation where E discontinued flexible work hours of U leaders, and sympathizers, while permitting other Ees to continue working flexible hours)

B. G. Costich & Sons, Inc., et al. v. N.L.R.B. **613 F.2d 450 (C.A. 2) (1980)**

(Es' contributions to pension fund on behalf of casual Ees who were U members but not on behalf of non-U casual Ees, not unlawful; even if improper motive were found, no 8(a)(3) violation could be made out since only such discrimination as encourages or discourages U membership is prohibited whereas, in instant case, benefit to U members would not induce non-U Ees to join U inasmuch as E's conduct had no immediately realizable impact on rights of such Ees who never held reasonable expectation of receiving benefits afforded only to U Ees)

6710-7500 Of striking and nonstriking employees

Deister Concentrator Company, Inc. **253 NLRB No. 040**

6710-7500—Cont.

(failure to grant accrued bonus to unrecalled economic strikers violative)

Associated Grocers **253 NLRB No. 005**
(notwithstanding substantial strike violence, requirement that economic strikers, as precondition to reinstatement, must take polygraph test, violative, where most questions asked involved employment relationship (stealing, slowdowns, etc.) and were required only of strikers for which E furnished no justification; thus, strikers had to prove their innocence of both strike-related and nonstrike related misconduct)

General Time Corporation, Westclox Military Products Division **249 NLRB No. 178**
(E's failure to pay accrued vacation pay to striking Ees violative where no business justification existed)

6713 DELAY IN DISCHARGING OR LAYING OFF

6713-3300 After knowledge of facts relied on to justify discharge

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

6713-6700 After knowledge of offense relied on to justify discharge

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(where E had cause to fire Ee but did not do so until day after Ee attended U meeting, E violated Act as purpose was to discourage U membership)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

6715 DEPARTURE FROM ESTABLISHED PROCEDURES AND STANDARDS

6715-0600 Periodic wage review

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

6715-1600 Job posting

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(transfer of anti-U Ee to better position where she lacked knowledge of requirements for job and E did not follow its own posting policy, violative)

6715-2000 Discharge procedure

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(discharge of valuable Ee, *front-line U adherent*, assertedly for removing anti-U posters from wall and *shaking* Ee who placed such posters held violative where E failed to investigate Ee's actions, contrary to E's usual practice)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

6715-2500 Layoff procedure

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(selection of Ees for economic layoff, unlawful where Ees were selected out of seniority, supervisor and general foreman told Ees that U supporters would not be called back to work and that reason for layoff was to get rid of people who were trying to organize U, E hired new Ees before offering Ees on layoff opportunity to be employed, Ees recalled were as new Ees w/o their prior benefits and for probationary period, and E hired new Ees while Ees were still on layoff)

6715-3000 Disciplinary policy

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

Central Freight Lines, Inc. **250 NLRB No. 063**
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

CTS Keene, Inc. **247 NLRB No. 141**
(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(substantial evidence supported finding that issuance of written reprimands where oral reprimands were customarily issued in the first instance and where all but one who received written reprimands were U activists, was unlawful)

Northern Telecom, Inc. v. N.L.R.B. **618 F.2d 421 (C.A. 6, 1980)**
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

6715-4000 Enforcement of plant rules

CTS Keene, Inc. **247 NLRB No. 141**
(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

6715-4025 Imposition of more stringent rules

Hall of Mississippi, Inc. **249 NLRB No. 119**
(announcing strict adherence to company rules concerning break periods, violative, where such announcement represented change in existing practice and more stringent enforcement of company rules because of Ees' U activities)

6715-5000 Layoff during slack period

Hedison Manufacturing Company **249 NLRB No. 096**
(defense to unlawful imposition of restrictive conditions on transfer of Ees to other departments in lieu of layoffs on ground that E had no obligation to offer Ees transfers and could have laid them off w/o offering them alternative employment, rejected, where E had, as past practice, always offered Ees transfer, as alternative to layoff, free of conditions imposed on Ees herein)

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

6715-5500 Allotment of work

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(reduction of hours of leading U advocate, part time Ee with good employment record, in order to give less senior Ee *a few hours* held violative where E's action against seniority was contrary to its usual practice and was taken against Ee to *straighten him up*)

6715-6000 Leave practice

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(requiring U adherent to secure doctor's certificate in order to return to work after one day's absence, violative, where certificates were never required in past and obviously E instigated such policy because of Ee's U activities)

6715-7000 Recall after layoff

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(recall on basis of U adherence after layoff which was motivated by E's antagonism to U campaign, unlawful)

6718 DIFFICULTY IN SECURING EQUALLY EXPERIENCED REPLACEMENTS

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

6720 DISCRIMINATION AGAINST MEMBERS OF OTHER THAN FAVORED UNION

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**
(absenteeism rule disparately applied to U adherents)

6725 DISPROPORTIONATE NUMBER OF UNION'S MEMBERS IN GROUP DISCRIMINATED AGAINST

6725-2500 Discriminatory basis for reinstating strikers

Associated Grocers **253 NLRB No. 005**
(notwithstanding substantial strike violence, requirement that economic strikers, as precondition to reinstatement, must take polygraph test, violative, where most questions asked involved employment relationship (stealing, slowdowns, etc.) and were required only of strikers for which E furnished no justification; thus, strikers had to prove their innocence of both strike-related and nonstrike related misconduct)

6725-5000 Only union members discharged

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

6725-7500 Unit (departmental or plantwide) in which disproportion is significant

Hedison Manufacturing Company **249 NLRB No. 096**
(layoff of 21 Ees 19 of whom had signed U cards indicated high probability that layoff was discriminatorily motivated)

6728 EXONERATION OF EMPLOYEE FROM CHARGES ALLEGED AS REASON FOR DISCHARGE

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

6730 FAILURE TO DISCIPLINE SAME EMPLOYEE FOR EARLIER CONDUCT OF SAME CHARACTER AS THAT RELIED ON

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

Peavey Company **249 NLRB No. 110**
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**

The Royal General Company **JD-17-80**
(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engagd in U activities)

Sunnyvale Porshe Audi, Inc. **JD-(SF)-9-80**
(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

6733 FAILURE TO GIVE BOARD EXPLANATION FOR DISCHARGE

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

6735 FAILURE TO TELL EMPLOYEE AT TIME OF DISCHARGE REASON THEREFOR

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(alleged complaints regarding servicing of locals against Ee-staff members of U council by rank-and-file members held not reason for discriminatory transfer of staff members, where council administrator never counseled one member concerning alleged servicing complaints nor tell him that such complaints were reason for transfer and, in discussing transfer with another member involved in transfer, administrator did not mention alleged servicing complaints as reason for transfer; in stead, administration had commended latter Ee on his work in his area)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E's defense of economic necessity for layoff or discharge of Ees rejected as pretextual, where E failed to submit any documentary evidence of alleged adverse business conditions claimed as reason for its action; and, although E asserted it had decided to lay off Ees several weeks prior to date layoffs were effected, E did not mention such decision or alleged underlying business conditions to Ees until date of their termination)

6738 FAILURE TO WARN EMPLOYEE PRIOR TO DISCIPLINE

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

6740 FALSE EXPLANATION INDICATES ANTIUNION MOTIVE

Stewart-Warner Corporation **253 NLRB No. 016**
(unlawful motive may be inferred from falsity of stated motive; however, such inference is justified only where motive sought to be concealed by false reasons is unlawful)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(when asserted reasons for discharge fail to withstand examination, inference can be drawn that there is an unlawful reason, which E seeks to conceal, for discharge)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(where asserted motive for discharge is false, trier of fact can infer that there is an unlawful motive which E desires to conceal)

6740-5000 Pretext

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(pretext is when E asserts what appears to be legitimate business reasons for its actions, but on examination of the evidence reveals, however, that purported rule or circumstance advanced by E did not exist or was not relied upon by E)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of U adherent held unlawful where personnel record of adherent stated he was discharged for distributing literature on company time and E testified she was discharged for allowing unreasonable backlog in her work to accumulate since where shifting explanations offered for discharge of known U adherent Bd is justified in concluding neither reason is real reason and discharge was discriminatorily motivated)

Norman Mesnikoff, Receiver in Bankruptcy for
Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(severe reaction and total intransigency to alleged problem (leaving on long scheduled vacation) which at best was precipitated by E's own management is clear evidence of pretext)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

6740-5000—Cont.

(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

General Warehouse Corp. **247 NLRB No. 142**
(discharge of vociferous leader of Ees opposed to waiving E's cost of living increase, assertedly because of his absenteeism, held violative where discharge came on heels of Ees' rejection of E's attempts to avoid cost of living increase, followed by E's changing its check cashing policy and eliminating rotating Ees for work they considered undesirable)

Service Garage, Inc. **247 NLRB No. 115**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(where reasons advanced by E for personnel actions are not persuasive, protected or U activity may well disclose real motive behind E's actions and show that reasons are pretextual)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

6740-5050 Raised for first time at Board hearing

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

6743 GOOD EMPLOYMENT RECORD OF DISCRIMINATEE

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(alleged complaints regarding servicing of locals against Ee-staff members of U council by rank-and-file members held not reason for discriminatory transfer of staff members, where council administrator never counseled one member concerning alleged servicing complaints nor tell him that such complaints were reason for transfer and, in discussing transfer with another member involved in transfer, administrator did not mention alleged servicing complaints as reason for transfer; in stead, administration had commended latter Ee on his work in his area)

Harvey's Wagon Wheel, Inc. v. N.L.R.B. **550 F.2d 1139 (C.A. 9, 1980)**

6743-0900 Absence of complaints

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Suburban Ford, Inc. **248 NLRB No. 051**

6743-4500 Favorable comment

6743-4533 By supervisors

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Lane Trenching, Inc. **247 NLRB No. 183**
(discharge of admittedly *good* Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

6745 INVESTIGATION OF EMPLOYEE'S CONDUCT

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(discharge of valuable Ee, *front-line U adherent,* assertedly for removing anti-U posters from wall and *shaking* Ee who placed such posters held violative where E failed to investigate Ee's actions, contrary to E's usual practice)

Pittsburgh Press Company **252 NLRB No. 075**
(lack of more thorough investigation, including failure to get Ee's version of facts regarding incident leading to his suspension, indicated discriminatory basis for suspension of Ee)

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's willingness to rely, w/o question or further investigation, on unsubstantiated alleged incidents which E proffered as reasons for discharge, draws into question E's asserted reasons for discharge)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

6750 OFFER OF REINSTATEMENT ILLEGALLY CONDITIONED

6750-2600 Taking polygraph test

Associated Grocers **253 NLRB No. 005**
(notwithstanding substantial strike violence, requirement that economic strikers, as precondition to reinstatement, must take polygraph test, violative, where most questions asked involved employment relationship (stealing, slowdowns, etc.) and were required only of strikers for which E furnished no justification; thus, strikers had to prove their innocence of both strike-related and nonstrike related misconduct)

6753 OFFER OF REINSTATEMENT SUBSEQUENT TO FILING OF CHARGES

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(original rejection of unconditional request for reinstatement with *No, we don't have a job for you,* but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work,* violative as offer vague and not tendered in good faith)

6758 CHANGE OF PRIOR ATTITUDE TOWARD EMPLOYEE

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

6760 PRIOR QUESTIONING OR WARNING

6760-1400 Questioning employee concerning union

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

6760-5600 Threats of discharge or layoff, etc.

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(inference of discriminatory motive for Ees' discharges warranted in view of closer scrutiny of Ees' work performance which followed closely in time on advent of Ees' U activities and resulted in sudden and constant criticism of their work, numerous threats of discharge, and close timing of discharges in relationship to Ees' U activities)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff and offered Ee adherent severance pay to induce her to seek other employment)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

6765 REINSTATEMENT AFTER DISCHARGE

6765-5000 As new employee

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**

6768 REPLACEMENT OF DISCRIMINATEE

6768-1400 Additions to staff from which discriminatee was laid off for alleged lack of work

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(failure to reinstate striker assertedly because no work was available held violative where E's *alter ego* (reactivated to avoid U) had available work; *alter ego* had crew of nine Ees doing unit work after strike had ceased)

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

6768-2800 After layoff for slack

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

6768-5600 By new man

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

6775 RETENTION OF LESS QUALIFIED EMPLOYEE AT TIME OF LAYOFF

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

6783 DISREGARD OF SENIORITY

Burns Motor Freight, Inc. **250 NLRB No. 045**
(failure to reinstate ULP striker, unlawful, where job available for which he was qualified and other strikers with less seniority recalled)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**

6785 LACK OF APPARENT REASON OR ADEQUATE EXPLANATION FOR ACTION

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

6788 SHIFT OF GROUND IN EXPLAINING EMPLOYER'S ACTION

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(an unfavorable inference can be drawn from an E's shifting explanations for its treatment of an Ee)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(inference drawn that Ee was discharged for U activity where E offered a myriad of reasons which E did not consistently maintain throughout hearing; rather, E vocillated over reasons underlying its discharge decision)

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation by discharge of U *pusher* where E vacillated between two asserted separate reasons for discharge-Ee's absenteeism and his lying about seriousness of his father's illness as reason for his absence; E called management meeting upon U *pusher's* return to work before knowing he had lied about his father's being hospitalized, then relied upon the lie as the reason for discharge notwithstanding lenient policy about excusing absences)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

6788-5000 Conflicting reasons or inconsistent theories

Russ Togs, Inc. **253 NLRB No. 099**
(defenses found shifting where E first contended that layoff was due to lack of work, then to laid-off Ees' intimidation of co-worker, than to their alleged promotion of a slowdown)

Swift and Company **250 NLRB No. 152**

Brooks Cameras, Inc. **250 NLRB No. 116**
(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of U adherent held unlawful where personnel record of adherent stated he was discharged for distributing literature on company time and E testified she was discharged for allowing unreasonable backlog in her work

6788-5000—Cont.

to accumulate since where shifting explanations offered for discharge of known U adherent Bd is justified in concluding neither reason is real reason and discharge was discriminatorily motivated)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of bartender-U adherent, assertedly for being away from his work, using customers', rather than Ees', restroom and not being properly attired held violative where shifting reasons were adopted by E to conceal discriminatory motive)

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

6790 STATEMENT MADE BY EMPLOYER CONCERNING DISCHARGE

6790-3300 After discharge

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(E's statements to Ees that real reason for layoffs and department shutdown was because E could not afford to pay U wages and that E could not operate under U)

Southwest Detroit Hospital **249 NLRB No. 071**
(fact that supervisor failed to state succintly proximate cause of discharge does not allow for invocation of *pretext* or *shifting reasons* theory against E)

6790-6700 Prior to or at time of discharge

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(discharge of formerly striking Ee assertedly for threatening violence against E's wife and house, unlawful, where Ee's denial of threat was credited, prior to discharge E made statement that he would have gotten rid of Ee but for U, and E exhibited virulent hostility toward ex-strikers generally)

6793 TIMING OF DISCRIMINATORY ACTION

Harvey's Wagon Wheel, Inc. v. N.L.R.B. **550 F.2d 1139 (C.A. 9, 1980)**

6793-1100 After employee questioned employer about benefits

General Meats, Inc. **247 NLRB No. 153**
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

J. Teixeira Construction, Inc. **JD-(SF)-265-80**
(discharge of Ee who protested E's failure to pay him for *stand by* time as provided under contract, violative)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(discharge of Ee for conduct at E-Ee meeting violative as Ees were discussing employment terms with E)

6793-1200 After employer gained knowledge of union activity

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(inference of discriminatory motive warranted where E would not reinstate Ee allegedly because E would no longer get along with Ee after Ee threatened ct action against E and, when considering how valuable Ee was to E, E would not so summarily have allowed Ee to leave had it not been for certain knowledge that E had of his very recent U activities)

Nevada County Publishing Co., d/b/a **The Union** **251 NLRB No. 143**
(close timing of Ee's discharge and his engagement in U activities as well as unlawful interrogation of Ee supported finding that E unlawfully discharged Ee)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(inference of discriminatory motive for Ees' discharges warranted in view of closer scrutiny of Ees' work performance which followed closely in time on advent of Ees' U activities and resulted in sudden and constant criticism of their work, numerous threats of discharge, and close timing of discharges in relationship to Ees' U activities)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

Hedison Manufacturing Company **249 NLRB No. 096**
(final decision arrived at to lay off Ees)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purposes was to discourage Ee so she would quit)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(discharge of Ee w/i very short time E knew Ee was U officer held violative where E's reasons for discharging Ee were shifting and somewhat contradictory)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

American Petrofina Company of Texas **247 NLRB No. 015**
(Fact almost year had passed between U activity of alleged discriminatee and his discharge did not preclude finding of violation since *mere passage of time does not gainsay discriminatory intent*)

Anserphone, Inc. v. N.L.R.B. **632 F.2d 4 (C.A. 6, 1980)**
(discharge of Ee violative, where despite her conflicts with fellow workers and fact that she was subject to discharge for long period prior to actual discharge, circumstances support conclusion that timing of her discharge was more a result of her U activity than her work performance)

6793-2500 Coincidence with critical period in union movement

6793-2511 At height of union membership or organizational drive

Lou Awald Chevrolet, Inc. **253 NLRB No. 113**
(discharge unlawful where date of discharge was accelerated because of U activist's attempt to organize Ees; although activist was next in line for

6793-2511—Cont.

termination due to E's declining sales, timing of sudden and immediate discharge indicated E's frustration with Ee's U activities)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**

6793-2517 Following demand for recognition

Brooks Cameras, Inc. **250 NLRB No. 116**
(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(removal of U adherent from driving assignment after U representatives communicated desire for recognition held violative where timing and circumstances supported finding that action was retribution for Ees U activities)

6793-2533 Following election of union

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(discharge of E's senior, most trusted Ee, immediately after E learned U won election violative where E had previously interrogated Ee and learned that he had voted for U)

793-2588 Imminence of representation election

Sameric Corporation **253 NLRB No. 043**
(terminating one Ee by eliminating his shift and transferring another Ee and subsequently promoting him to supervisory status, violative, where both were U adherents seeking representation election for unit comprising of only themselves)

Suburban Ford, Inc. **248 NLRB No. 051**
(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

St. Regis Paper Company v. N.L.R.B. **623 F.2d 487 (C.A. 6, 1980)**
(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

93-5000 Coincidence with other unfair labor practices

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(inference of discriminatory motive for Ees' discharges warranted in view of closer scrutiny of Ees' work performance which followed closely in time on advent of Ees' U activities and resulted in sudden and constant criticism of their work, numerous threats of discharge, and close timing of discharges in relationship to Ees' U activities)

6793-5040 Discharge of other employees for union activity

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

6793-5060 Interrogation

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

6793-7500 Following conspicuous union activity of discriminatees

6793-7519 Sponsoring or circulating petition regarding union

North State Supply Co., Inc. **247 NLRB No. 181**
(discharge of Ee immediately after he embarked on U organizational campaign violative)

6793-7531 Participation in prior ULP proceeding

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

6793-7537 Attendance at union meeting

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(transfer of Ee-staff members by U council to different locations in their assignment of servicing U locals, unlawful, where action was in retaliation for their protected U and concerted activities; action came on heels of unlawful suspension of Ees for attending U meeting and for soliciting aid outside of labor organization, and closely followed council's attempt to prevent second U meeting involving U's attorney called to address, among other things, Ees' suspensions)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(discharge followed Ee's participation in U meetings called to consider E's disciplining of Ees and which E tried to prevent Ees from attending)

6793-7563 Processing of grievances

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

United States Steel Corporation **250 NLRB No. 059**

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

Peavey Company **249 NLRB No. 110**
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

6793-7563—Cont.

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

6793-7575 Leadership in union movement

GE's Trucking, Inc. **252 NLRB No. 131**
(timing of termination held significant where Ee, who was leading U advocate, was terminated 8 days after conversation with E during which Ee expressed dissatisfaction with his employment and preference for U and E made a number of anti-U statements; E's reference to such prior conversation at time of discharge indicated his true motivation)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(discharge of Ee after he showed that he seriously intended to pursue what had earlier been a less-than-consistent interest in achieving collective representation for Ees which threatened to lead to breakdown of *family* relationship which E tried to maintain among its Ees)

6793-7581 Filing grievance

Russ Togs, Inc. **253 NLRB No. 099**
(where pattern of harrassment against two discriminatees did not begin until after E learned they were urging other Ees to grieve about E's underpayment of contractual wage rate and where the two Ees were not laid off until after E raised wages to level agreed upon in contract)

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**

Burgess Mining & Construction Corp. **250 NLRB No. 033**
(layoff of Ee, lawful, notwithstanding GC's contention that E laid off Ee because he had filed grievances, where there was no substantial evidence establishing animosity toward grievance procedure and against those who would invoke it and there was no disparate treatment demonstrating unlawful motivation)

J. Teixeira Construction, Inc. **JD-(SF)-265-80**
(discharge of Ee who protested E's failure to pay him for *stand by* time as provided under contract, violative)

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

N.L.R.B. v. Eaton Corporation **623 F.2d 479 (C.A. 6, 1980)**
(discharge of Ee unlawful since for filing grievance rather than for failure to give proper notice of absence in view of evidence Ee told fellow Ee he would be absent and information was passed along to foreman)

6793-7589 Acting as union election observer

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**
(discharge of Ee not unlawful, since for unauthorized absence rather than for acting as U observor at election and attending U meetings, where Ee had received pay raise before and after election, and Ee had not asked for time off but simply informed supervisor she was taking day off)

6795 UNUSUAL SURROUNDING CIRCUMSTANCES

6795-1500 Formality and summary nature of dismissal

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(discharge occurred only 7 days after Ee had returned to work following his unlawful suspension)

6795-7000 Severe penalty for trivial offense

Gladwin Corporation **JD-565-80**
(sudden layoff of U activist assertedly for violation of E's rule restricting carrying and consumption of alcoholic beverages oncompany premises held violative where Ee was seen drinking beer on his own time on E's parking lot, an admitted borderline violation, which behavior was treated w/same severity as obvious case of intoxication 12 years previously)

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

6795-8000 Suddenness of employer's decision

Elizabeth Motors, Inc. **252 NLRB No. 161**

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(for Ee's first violation)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(severe reaction and total intransigency to alleged problem (leaving on long scheduled vacation) which at best was precipitated by E's own management is clear evidence of pretext)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspension of U committeeman for allegedly stealing customer receipts, violative, when made w/o prior warning and Ee told that *you have a lawyer* referring to U's counsel)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

Gladwin Corporation **JD-565-80**
(sudden layoff of U activist assertedly for violation of E's rule restricting carrying and consumption of alcoholic beverages oncompany premises held violative where Ee was seen drinking beer on his own time on E's parking lot, an admitted borderline violation, which behavior was treated w/same severity as obvious case of intoxication 12 years previously)

Albany Steel and Brass Corporation **JD-227-80**
(discharge of admittedly *very knowledgeable Ee* assertedly because of his absenteeism and for his job deficiencies held violative where E terminated Ee forty minutes after being notified that Ee intended to seek assistance from Bd concerning his pension dispute with E; discharge was precipitous and in middle of pay period)

8300 AFFIRMATIVE DEFENSES TO CHARGES OF DISCRIMINATION

8301 GENERALLY

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(treating E's plea of *legitimate business reason* for discipline as affirmative defense was consistent with Bd's method of deciding cases involving violation of Section *8(a)(3)*)

8301-4000 Act permits discharge for any reason other than union activity

Blue Bird Body Company **251 NLRB No. 196**
(discharge of active U adherent for *goofing off* not violative where GC failed to prove by preponderance of evidence that discharge was motivated in whole or part by Ee's U activity)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8301-6000 Mixed motives; other grounds immaterial if encouragement or discouragement was also purpose

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

8301-6000—Cont.

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(difference between *dual motive* case and *pretext* case is that in latter case E's affirmative defense of business justification is wholly w/o merit)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(*Mt. Healthy*, 429 U.S. 274 (1977), procedure accomodates legitimate competing interests inherent in dual motivation cases, while at same time serving to effectuate policies and objectives of Section *8(a)(3)* of Act)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

Alfred M. Lewis, Inc. **250 NLRB No. 183**
(Bd held that Ee's discharge, allegedly for his *bad attitude* and low production, was instead *solely* a result of E's unlawful production quota and disciplinary systems, since Ee's attitude toward E's unlawful production quotas caused his low production, and his attitude had developed, as reaction to E's counseling implemented as part of unlawful disciplinary system; Ee had refused counseling, as was his right, and his failure to accept it was not legitimate basis for discharge)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(discharge motivated only in part by anti-U discrimination is illegal)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual* but *burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one)*

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(E can best show improper motives did not move it to discharge Ee by adducing proof that other Ees were discharged for same reason that Ee was discharged, where there is no suggestion that other Ees were discharged for improper motive)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**
(once E comes forward with legitimate motive for dismissal, burden that discharge was unlawfully motivated, or improper notice contributed to discharge, on Bd; burden of establishing discharge was unlawfully motivated must be met by substantial evidence)

8301-8000 Valid cause for discrimination no defense

Herman Brothers, Inc. **252 NLRB No. 121**
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

RMX, Inc. **JD-583-80**
(termination of Ee unlawful, notwithstanding E had legitimate cause to discharge Ee for his insubordination, where Ee would not have been discharged absent his U activity)

8301-8025 8(a)(3) not sustained where lawful and illegal motive may be equally inferred

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(test of *causation* for cases alleging violations of Section *8(a)(3)* of act found through analysis akin to that of SCt in *Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977)*)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual* but *burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one)*

8307 BUSINESS MANAGEMENT CONSIDERATIONS

8307-0100 Generally

Miami Foundry Corporation **252 NLRB No. 002**
(termination of Ees, not unlawful, where not motivated by anti-U animus but by legitimate financial considerations)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(treating E's plea of *legitimate business reason* for discipline as affirmative defense was consistent with Bd's method of deciding cases involving violation of Section *8(a)(3)*)

East Wind Enterprises **250 NLRB No. 101**
(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

Safety Line, Inc. **250 NLRB No. 075**
(discharge of U adherent working only part-time not violative where he was given choice of working full time to fulfill E's need for greater production or being discharged, and he did not choose to work full time)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

8307-0150 Economic necessity does not justify ULP

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E's economic situation may have justified its proposing reduction in wages, it was not established that economic necessity justified its refusal to reinstate strikers except on its own terms; E's position that to reinstate strikers at higher rates was unrealistic was w/o merit, since mutually acceptable agreement may have been reached if E had met its statutory obligation)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E could

8307-0150—Cont.

avoid such a situation by discharging strikers and replacing them with individuals willing to work at lesser rates, such conduct would constitute a unilateral action frustrating negotiations and an evasion of duty to bargain on questions which are subject to compulsary bargaining)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

8307-1400 Change to independent contractor system

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

8307-2200 Reorganization

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(U council's transfer of Ee-staff members to different locations in their assignments of servicing U locals held not motivated by legitimate business considerations, where Ees were experienced lobbyists for council in state legislature in their original assignments; Ees were not given notice of intent to transfer them; only after council had taken issue with Ees' attendance at U meeting and after their return from unlawful suspension were transfers announced; and only Ees herein were singled out from among other Ees E intended to reassign)

8307-2800 Discontinuance of department, operation, or shift for economic reasons

Wilson Foods Corporation **JD-(SF)-292-80**
(changing starting time for Ee for allegedly refusing to withdraw several grievances, not unlawful, where grievant was not only Ee put on later starting time and change in mode of delivery of product from use of railroad to use of trucks made it unnecessary for Ee to report to work early; no evidence cast doubt of E's decision to effect small financial saving by cutting hour off combined shifts of Ees involved)

8307-2850 Not real reason

Behring International, Inc. **252 NLRB No. 055**
(E's economic defense to layoff of warehouse Ees on ground that subcontracting its warehouse labor ultimately could be financially beneficial, rejected, where E was motivated , at least in part, by desire to reduce possibility of another U election in future)

8307-3500 Efficiency drive

8307-3550 Not real reason

Maywood, Inc. **251 NLRB No. 139**
(transfer of U leader to less desirable job assertedly in the interest of increasing production, violative where her pre-transfer job was reassigned to less-experienced person, E was hostile toward U adherents, and the transfer came about the next working day after she testified for U in RC-case)

8307-4200 Poor productivity

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(discharge of Ee assertedly for poor productivity and Ee's statement vowing not to meet production standard, not unlawful, absent evidence of E's knowledge of, or animus against Ee's U activity; moreover, no basis exists for concluding that reason given at time of discharge was not sole motivating cause for discharge)

8307-4250 Not real reason

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E giving Ee written warning and 3 day suspension in reprisal for his leading role in U organizational campaign, unlawful; E's contention that Ee produced less than other department Ees was pretext for warning and suspension)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

Garden State Motors Co. **JD-160-80**

8307-4900 Shortage of essential materials

8307-4950 Not real reason

GE's Trucking, Inc. **252 NLRB No. 131**
(termination of Ee allegedly because of decline in quantity of product E was carrying, and Ee's failure to follow E's trucking delivery rules, unlawful in view of E's admitted laxity in enforcing rules, lapses by other Ees, and E's U animus; selection for termination for valid economic reasons of Ee can only be explained as motivated by E's concern that Ee's influence as leading U advocate would lead to unionization)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

8307-5200 Overstaffing

Albertson's Inc. **JD-(SF)-104-80**
(no violation, where E would have faced problems trying at another store to hire Ee who had filed grievance, because of E's full work force)

8307-7700 Shutdown because of operational difficulties

8307-7750 Not real reason

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**
(layoff of Ee assertedly because of breakdown and shutdown of machine Ee principally operated, unlawful, where Ee did not spend significantly greater amount of time on affected machine than on others, machine was not shutdown prior to or at time of layoff and, following layoff, it was operated off and on until taken out of service 3 or 4 months later)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(layoff of Ees, unlawful, notwithstanding contention layoff due to problems with production process, as layoffs took place w/o regard to seniority after Ees had rejected E's contract proposals to Ee committee and E gained knowledge of Ees' support of outside U, production problems had existed for some weeks prior to layoffs and E hired new Ees during period; further, Ees were recalled day after committee signed contract with E)

8307-8000 Absorption or elimination of work duties

Conagra, Inc. **248 NLRB No. 085**
(elimination of U adherent's job as *bathroom relief*, not unlawful, where necessity for position was eliminated by remodeling, adherent was offered another job by E but rather than bump incumbent took voluntary layoff and went on unemployment compensation, and upon expiration of unemployment benefits returned to work in another position)

8307-8400 Slack work or other economic necessity

Kuno Steel Products Corp. etc. **252 NLRB No. 127**
(Es failed to rebut GC's *prima facie* case establishing that Es did not meet their obligation to reinstate economic and unfair labor practice strikers to conditions current at time of strike by showing substantial business justification and thereby violated Act)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because E lost contract with major customer, unlawful, where E failed to explain circumstances involved and to mention layoffs or any likelihood of loss of contract to Ees prior to layoff, and supervisors admitted to Ees that E would rather close operation than deal with U)

8307-8433 Not real reason

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**
(where only one Ee out of 60 was terminated)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

Hedison Manufacturing Company **249 NLRB No. 096**
(asserted seasonal decline rejected as reason for layoffs where assertion was merely an after-thought and was not basis for layoffs where E failed to prove any business consideration for layoffs as indicated by almost total absence of records to support E's position)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E's defense of economic necessity for layoff or discharge of Ees rejected as pretextual, where E failed to submit any documentary evidence of alleged adverse business conditions claimed as reason for its action; and, although E asserted it had decided to lay off Ees several weeks prior to date layoffs were effected, E did not mention such decision or alleged underlying business conditions to Ees until date of their termination)

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**
(discharge of Ee assertedly because of lack of work, unlawful, where, at time of layoff, Ee had not run out of work and was laid off w/o advance notice in the middle of a job before end of work week and pay period, no documentation substantiated E's position, and supoenad records indicated no downturn of business at time of layoff)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon

8307-8433—Cont.

after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

Suburban Ford, Inc. **248 NLRB No. 051**

(E's *economic defense* of *business decline* rejected where chose not to introduce into evidence documentation of its annual reports, profits and loss figures etc. or any data for comparative purposes regarding personnel and income levels; failure to introduce such evidence justified inference that it would not support or assist contentions of party who originated them)

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center **247 NLRB No. 136**

(E's contentions in defense of its failure to reinstate discharged strikers that it was economically justified and operated normally w/o them found contradicted by significant increase in costs for overtime paid remaining Ees and hiring of nonunit Ees whose primary function was same as that of strikers)

International Business Systems, Inc. **247 NLRB No. 102**

(violation where E reduced Christmas bonus by half because of Ees' U activity and not because available cash was insufficient, as asserted)

C-F Air Freight, Inc. **247 NLRB No. 060**

(failure to recall strikers to work assertedly because of financial losses at E's facility, unlawful, where E unlawfully threatened to close plant, contention that decision to do so was made before U activity began was patent contrivance, E made statement to Ees that if they unionized E *would padlock door* and expressed antagonism toward U, and disparate nonclosure of another facility was based on lack of U activity threat)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**

(business was slow)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**

(violation where moving cause for discharge of instructor was continuation of their U activities following faculty strike rather than under-enrolled classes, as alleged)

8307-8450 Adequately established

Simpson Steel Fabricators & Erectors, Inc. **249 NLRB No. 164**

(layoff not unlawful absent evidence of E's knowledge of U organization activity, where layoff due to sharp drop in orders and Ees who were laid off not qualified to perform available work)

B. N. Beard Company **248 NLRB No. 016**

(discharge of truckdriver for quitting work early w/o permission, not unlawful, where Ee did so knowing that E was under pressure for economic reasons to have as much hauling work done as possible on day Ee left early)

Wunderwear, Inc. **JD-(NY)-6480**

(after contract was cancelled, layoff of Ees who worked primarily on that contract, not violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**

(layoffs not unlawful where E had incurred substantial losses and facility had been listed for sale before onset of U activity; and site of new operation was not ready for use at time of closing)

8307-9100 Transfer of department to new plant

Universal Security Instruments, Inc. **250 NLRB No. 092**

(discharge of Ees because of their refusal to accept transfer to E's new plant not violative where no evidence that discharges were based on any discriminatory motives, or refusal of Ees to transfer because of change in conditions of employment or absence of U at new plant, notwithstanding the transfers of willing Ees were violative because E failed to bargain with U)

8311 BUSINESS DISRUPTION

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**

(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8318 EMPLOYER POLICY AGAINST HIRING FORMER EMPLOYEES

Tartan Marine Company **247 NLRB No. 073**

(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

8320 ALTERNATIVES TO ACTION WOULD VIOLATE OTHER NLRB SECTIONS OR OTHER STATUTES

St. Regis Paper Company v. N.L.R.B. **623 F.2d 487 (C.A. 6, 1980)**

(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

8322 CONTRACT PROVISION

Cowlitz Studd Company **JD-(SF)-141-80**

(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

8322-2000 Discriminatory enforcement of provisions

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**

(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

8322-5000 Union security or checkoff

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**

(E's continuing to remit dues to U pursuant to checkoff agreement, unlawful, where Ees had revoked checkoff authorizations via letters notwithstanding bargaining agreement required revocations to be on form provided by U; particularly where forms were only available at U headquarters which was inconveniently located and prior to revocation activity Ees were not informed regarding procedures to follow to obtain forms)

8322-8000 No-strike agreement

Metropolitan Edison Company **252 NLRB No. 147**

(disciplining U officers more severely than other Ees for participating in sympathy strike in violation of no-strike clause, violative)

Andersen Sand & Gravel Company **JD-655-80**

(discharge of strikers, unlawful, since work stoppage protected ULP strike; E's contention unprotected since in contravention of no-strike agreement, rejected, where asserted no-strike agreement was in contract which expired by its own terms)

8326 DELAY IN DISCHARGE AFTER KNOWLEDGE OF UNION ACTIVITY CARRIED ON BY EMPLOYEE NO DEFENSE

American Petrofina Company of Texas **247 NLRB No. 015**

(Fact almost year had passed between U activity of alleged discriminatee and his discharge did not preclude finding of violation since *mere passage of time does not gainsay discriminatory intent*)

8329 FAILURE OF EMPLOYEE TO APPLY FOR REINSTATEMENT

8329-0600 Unconditional application

Owen Joint Corporation **248 NLRB No. 076**

(returning strikers' actions and statements, held to be broad enough to constitute unconditional offers, where they came to shop superintendent's office and one of them told superintendent, *I'm ready to go back to work*, while another asked him *for my timecard and my job* and, upon learning that they were replaced, another striker asked superintendent, *when a job came open, would he give me a call*)

8329-0900 Timeliness of application

Kuno Steel Products Corp. etc. **252 NLRB No. 127**

(E's defense to its refusal to offer strikers reinstatement is that U's offer to return to work is untimely, is without merit where unremedied ULPs committed by Es prolonged strike; U was involved in protracted Bd proceeding and offer to return to work made just over a month after ct decision)

8329-1200 After non-ULP strike or layoff

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. **620 F.2d 1120 (C.A. 5, 1980)**

(no violation by failure to recall U adherent absent proof that such Ee ever expressed desire to be rehired or that E had affirmative policy of rehiring Ees)

8329-7500 No defense where illegally conditioned

Don Pizzolato, Inc. **249 NLRB No. 136**

(where Ee did not return application form to former E, this was not considered rejection of valid offer of reinstatement as application clearly indicated interview was needed and was conditional offer)

8347 FAILURE TO APPLY FOR JOB

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**

(discharge of formerly striking Ee purportedly for taking E's money for personal use, unlawful, where discharge was in retribution for Ee's striking as evidenced by E's animus toward ex-strikers and resolve to discharge them, misleading nature of termination notice implying that money was taken in clandestine manner, and fact that Ee acted with consent of immediate supervisor and had returned money w/i agreed upon time and before being confronted by E about what he had done)

8351 MISCONDUCT OF EMPLOYEE

8351-0100 Generally

General Telephone Company of Michigan **251 NLRB No. 099**

(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(E cannot provoke an Ee to point where Ee commits an indiscretion, and then rely on this to terminate the employment of Ee)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(E will not be allowed to rely on Ee's offensive conduct as basis for discharging Ee since, but for E's ULPs, conduct attributed to Ee and relied on by E for discharge, would not have occurred)

8351-0114 Condonation vitiates defense

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(E did not condone picket line misconduct where it consistently warned strikers about their conduct, obtained temporary injunction against strike, and discussed with U disciplining 12 strikers for their misconduct notwithstanding notice to strikers that all would be reinstated)

The Royal General Company **JD-17-80**

(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engagd in U activities)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**

(where E, after promptly imposing sanctions on Ee at time of alleged misconduct, specifically informed U that no further discipline would be imposed on Ee for his behavior that 1 day, ct held such statement demonstrates that E had condoned Ee's alleged misconduct)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**

(where following Ee's alleged strike misconduct E specifically informed Ee that she was being given 2-day suspension w/o pay and then scheduled her to return to work and carried her w/o comment on its Ee roster, ct held such actions on part of E are sufficient to show condonation for Ee's alleged strike misconduct)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**

(Bd not precluded by Section 8(g) from finding condonation for Ees' alleged strike misconduct, where Ees' actions neither involved type of massive U activity contemplated by 8(g) nor implicate concerns about endangering health of patients Congress intended to voice thereby)

8351-0128 Good-faith belief as to misconduct may be defense

North Cambria Fuel Company, Inc. **247 NLRB No. 176**

(termination of striking Ees for serious misconduct, not unlawful, where E reasonably believed that strikers were guilty of improper conduct in view of their gathering outside E's gates in contempt of ct injunction, damage done to suppliers' trucks by rocks thrown by Ees and subsequent guilty pleas in ct to charge of disorderly conduct)

Page Airways of Michigan, Inc. **JD-862-79**

(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

8351-0142 Mistaken belief as to misconduct no defense if conduct did not in fact occur

Giant Food, Inc. **252 NLRB No. 182**

(Ee who urged another Ee to aid U by supporting its objections to election involved in protected activity not harrassment and discharge violative; moreover, E's belief that had Ee engaged in misconduct does not justify discharge where in fact he had not engaged in such misconduct)

Catalina Yachts **250 NLRB No. 048**

(violation by discharge of U activist for urging two Ees to vote for U; dischargee was engaging in protected activity, notwithstanding E may have believed he had threatened fellow Ees with being reported to immigration services, as asserted)

Page Airways of Michigan, Inc. **JD-862-79**

(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

8351-1200 Breach of no-strike agreement

Sav-On Drugs, Inc. **253 NLRB No. 045**

(strike protesting unlawful discharges held not in contravention of no-strike agreement which was limited to matters subject to resolution by grievance procedures, since dischargees were not covered by contract and grievance procedures therefore applied neither to the discharges nor the strike itself)

Bethlehem Steel Corporation **252 NLRB No. 138**

(where Ees participated in work stoppage in violation of no-strike provision of contract and E disciplined U official with 10 day suspension and all others with 5 day suspension it violated Act as his punishment based on his position in U)

Hammermill Paper Company **252 NLRB No. 172**

(discharge of Ee for participation in unprotected work stoppage solely because of his position as U steward, violative)

Metropolitan Edison Company **252 NLRB No. 147**

(disciplining U officers more severely than other Ees for participating in sympathy strike in violation of no-strike clause, violative)

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**

(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

C. H. Heist Corporation **250 NLRB No. 185**

(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

Andersen Sand & Gravel Company **JD-655-80**

(discharge of strikers, unlawful, since work stoppage protected ULP strike, E's contention unprotected since in contravention of no-strike agreement, rejected, where asserted no-strike agreement was in contract which expired by its own terms)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**

(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

8351-1500 Breach of company rules

United States Postal Service **JD-(SF)-273-79**

(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**

(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purposes proscribed by rule were tolerated at plant)

8351-1550 Not real reason

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**

(discharging leading U in-house organizer shortly before Bd-conducted election, assertedly because he violated no-solicitation rule, violative, since E did not have valid no-solicitation rule, but conjured up a no-solicitation rule for purpose of terminating U organizer)

8351-4900 Refusal to perform assigned duties

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**

(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8351-5800 Strike in violation of 8(g) notice requirements

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**

8351-5800—Cont.

(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

8351-6200 Strike misconduct

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(*picket line activity is generally protected, and the duty of going forward with evidence of conduct which would remove mantle of statutory protection is upon Respondent if, upon such alleged misconduct, it bases its post-strike employment decisions*)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

8351-6233 Not real reason

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

8351-6250 Insufficient to justify discharge or other discipline

Midwest Solvents, Inc. **251 NLRB No. 171**
(refusal to reinstate three economic strikers allegedly for egregious strike misconduct violative, where first striker's isolated threat to customer making deliveries to *blow up, or burn up* his combine w/o attempt to interfere with deliveries held type of minor misconduct Congress contemplated in providing right to strike; second striker's isolated mild intimidation of strike breaker to *watch* himself, that *some of the boys might get rowdy* held impulsive trivial misdeed; and third striker's parking his car in authorized parking place where it inconvenienced customer did not warrant job loss)

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(refusal to reinstate ULP strikers, violative, where their alleged misconduct of making statements critical of E's sanitary conditions at food preparation facilities and of temporarily blocking path of customers were so infrequent and isolated as to not lose protection of Act)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(although Ee may actually have engaged in misconduct he or she may not be denied reinstatement absent showing that misconduct was so violent or of such serious nature as to render Ee unfit for future service)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(mere verbal abuse, unaccompanied by any physical actions or gestures that add meaning to words, does not arise to level justifying disqualification from reinstatement)

Owen Joint Corporation **248 NLRB No. 076**
(returning striker's action of jumping and lying flat out on automobile hood of non-striking Ee when the latter was attempting to cross picket line, not sufficiently serious to justify denial of reinstatement)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(involvement in exchange of words and threats with nonstriker not bar to reinstatement and backpay where nonstrikers were agressors and strikers act was in self defense, further, incident too minor to bar reinstatement on backpay where no blows struck, and no damage to property or person)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(striker following car of non-striker insufficient to bar reinstatement and backpay where no threats made nor was there any attempt to run striker off road and non-striker not followed home)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(striking auto of non-striking Ee with picket sign impulsive trivial incident which did not bar reinstatement)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(ULP striker spitting at foreman and using profane language towards superintendent not sufficient misconduct to bar reinstatement, particulary since ULP striker)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(ULP striker striking side of non-striking Ee's car as non-striking Ee passing through gate of E's plant)

Page Airways of Michigan, Inc. **JD-862-79**
(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

8351-6255 Sufficient to justify discharge or other discipline

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

General Telephone Company of Michigan **251 NLRB No. 099**
(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

Triple A Machine Shop, Inc. **JD-(SF)-220-80**
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

Quadee Rubber Company, Division of Minnesota Rubber Company **JD-407-80**
(Ees' acts of violence and specific threats of bodily harm during economic strike justified their discharges)

Hoerner-Waldorf Corporation, A Division of Champion International Corporation **JD-(SF)-186-80**
(discharge of six Ees, not unlawful, where all six Ees engaged in picket line misconduct)

Voss Steel Corporation **JD-216-80**
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

8351-6267 Misconduct of other striker no defense

Triple A Machine Shop, Inc. **JD-(SF)-220-80**
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

8351-6900 Strike unprotected

Bethlehem Steel Corporation **252 NLRB No. 138**
(where Ees engaged in unprotected work stoppage in violation of no strike provision of contract, Ee who left work for different reason but later joined strikers in their activity found striker also)

8355 NONUNION EMPLOYEE SIMULTANEOUSLY DISCHARGED, LAID OFF OR OTHERWISE DISCIPLINED

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(discharge of Ee organizer for U assertedly because business was slow, violative, where shortly after the discharge E fired another Ee, not involved in U activity, to cover up termination of U organizer, and subsequently hired additional four Ees w/o recalling any of the discharged Ees)

8365 REINSTATEMENT OR OFFER OF REINSTATEMENT

8365-2000 No obligation to reinstate if for sufficient, legitimate, and substantial business reasons

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(burden on E to establish that it had sufficient, legitimate, and substantial business reasons for refusing to take back economic striker)

Graphic Components, Inc. **JD-377-80**
(no obligation of reinstatement of non-ULP striker if E decides not to fill position)

8365-2500 Offer not made in good faith no defense

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(original rejection of unconditional request for reinstatement with *No, we don't have a job for you*, but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work*, violative as offer vague and not tendered in good faith)

8365-3000 Conditions attached to offer

Associated Grocers **253 NLRB No. 005**

8365-3000—Cont.

(notwithstanding substantial strike violence, requirement that economic strikers, as precondition to reinstatement, must take polygraph test, violative, where most questions asked involved employment relationship (stealing, slowdowns, etc.) and were required only of strikers for which E furnished no justification; thus, strikers had to prove their innocence of both strike-related and nonstrike related misconduct)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(requiring ULP strikers to fill out availability for work forms as precondition to reinstatement violative)

8365-3300 Reinstatement to position not substantially same no defense

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

Graphic Components, Inc. **JD-377-80**
(where only part time or temporary positions available, E does not need to offer these positions to returning non-ULP strikers as positions not considered *substantially equivalent*)

8365-5000 Offer of reemployment as new employee no defense

Freezer Queen Foods, Inc. **249 NLRB No. 045**
(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it was not possible to achieve its purpose by tolling probationary period during strike, rejected)

8365-6300 No valid offer made

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(where Ee had been discriminated against on 2 occasions valid offer of reinstatement must include reassurance that no further discrimination would occur)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(where subject of returning to work is put as question to Ee and not as offer, burden is not on discriminatee to inquire whether or not offer was to reinstate him to his former position inasmuch as offer does not constitute unconditional offer of reinstatement)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(original rejection of unconditional request for reinstatement with *No, we don't have a job for you,* but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work,* violative as offer vague and not tendered in good faith)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(offer of reinstatement communicated to discriminatee's roommate not valid offer)

Newspaper Printing Corporation **JD-203-80**
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

8372 REPLACEMENT

8372-0100 Generally

Associated Grocers **253 NLRB No. 005**
(temporary strike replacements' status converted to permanent status when E communicated such change to replacements who then acknowledged such change in writing; however, as to Ees hired thereafter as temporary and received no assurance that their employment was permanent regardless of intention of E, they retained their temporary status)

8372-5000 Non-ULP strikers may be replaced

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**

8372-7500 ULP strikers may not be permanently replaced

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(*upon unconditional offer to return to work, ULP strikers are entitled to immediate reinstatement to their former jobs or if such jobs no longer exist to substantially equivlanet positions; further, burden is upon E to offer immediate and unconditional reinstatement, even if striker replacements must be terminated to make room for returning strikers*)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(permanently replacing and refusing to reinstate ULP strikers, unlawful)

8376 RETENTION OR REEMPLOYMENT OF UNION MEMBERS

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

8380 SENIORITY

Norym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

8384 UNION OR OTHER CONCERTED ACTIVITY, NO DEFENSE

8384-3300 Employer may discipline employee for union activities during work hours

Tartan Marine Company **247 NLRB No. 073**
(E posting notice requesting that Ees notify supervisors if any members of U organizing committee or anyone else attempted to *bother* Ees during working time about U, not unlawful; notwithstanding tone of notice, which also advised Ees against signing authorization cards and warned that members of U organizing committee would be held to full compliance with company rules, was hostile to U)

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

8384-8300 Particular activities

8384-8337 Display or wearing of union insignia

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

8387 UNSATISFACTORY BEHAVIOR OF EMPLOYEE

8387-0300 Absence from work or lateness

Alfa Leisure, Inc. **251 NLRB No. 088**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

Ben Franklin Division of City Products Corporation **251 NLRB No. 200**

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(discharge of Ee for absenteeism not unlawful, notwithstanding fact that Ee was active U organizer, where her final warning on absenteeism preceded any alleged U activity)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(warning given to Ee over lateness, not violative, where alleged hostility against Ee arose from incident too remote in time (2 months) to have been significant factor)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(discharges in drive to correct absenteeism, not unlawful, where U activity of alleged discriminatees was small, some dischargees were not alleged to be discriminatees, corrective action had been planned prior to U campaign, and E did not fire known U activist when presented the opportunity to do so)

Charles Batchelder Company, Inc. **250 NLRB No. 009**

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**
(discharge assertedly for excessive absenteeism, not unlawful, where E had no knowledge of, or animus toward Ee's U activity; E had evidence that Ee, who was chronically absent and repeatedly forewarned, had taken river boat cruise while he was supposed to be incapacitated; and such absence, whether caused by injury or irresponsibility, brought Ee's absenteeism record to point of being excessive)

Landmark Beef Processors, Inc. **248 NLRB No. 041**
(discharge of lead person, who was U advocate, for single unexcused absence held not violative where E had demonstrated no anti-U animus and Ee

8387-0300—Cont.

held position of some responsibility for which she received higher pay than others)

Aluminum Cruisers, Inc. **JD-497-80**
(discharge of U adherent not violative where it was not, as contended, for protected activities but was for excessive absenteeism)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(discharge of Ee for absenteeism not unlawful, notwithstanding GC's contention that absenteeism was E's pretext for discharge and real reason was Ee's U activity)

Coastal Volkswagen, Audi **JD-(SF)-144-80**
(discharge of U activist because of repeated unexcused absences, not violative, notwithstanding that E's earlier warning letter to him for absences violated 8(a)(3); it was not incumbent upon E thereafter to ignore unexcused absences)

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**
(discharge of Ee not unlawful, since for unauthorized absence rather than for acting as U observor at election and attending U meetings, where Ee had received pay raise before and after election, and Ee had not asked for time off but simply informed supervisor she was taking day off)

8387-0350 Not real reason

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(discharge assertedly for absenteeism and tardiness, violative where he had long history of such behavior yet was rehired after leave of absence, and recent warning of discharge if late again was issued soon after he was prevented from distributing U leaflets and became member of U steering committee)

Herman Brothers, Inc. **252 NLRB No. 121**
(discharge of driver, unlawful, where motivating factor in action was his circulating letter opposing provision in proposed bargaining agreement which would substitute mileage for number of hours worked as basis for computing drivers wages, rather than for three consecutive days failing to report his availability for work while awaiting call from dispatcher)

Maywood, Inc. **251 NLRB No. 139**
(poor attendance)

Logan Coca Cola Bottling Company **250 NLRB No. 164**

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unilateral reduction in length of grace period for lateness and disciplining Ee because her late arrival was outside protection of more stringent grace period but w/i original grace period guideline, violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ee assertedly for absenteeism, unlawful, where real reason was E's desire to rid itself of Ee primarily responsible for bringing U into plant and to let his discharge, publicly announced, serve as dramatic example to other Ees of what they could expect if they supported U)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ees assertedly because of their absences immediately prior to and after vacation period, unlawful, where real motive for discharge was revealed through E's comments to one of the Ees that *all this* would not have happened if Ees had not tried to get U in plant)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(discharge of formerly striking Ee assertedly for reporting to work 5 minutes late, unlawful, where E exhibited animus toward ex-strikers, pettiness of asserted reason for discharge demonstrated reason was pretextuous, and E betrayed intention to retain Ee only temporarily after her reinstatement)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(discharging Ee assertedly for his tardiness, absenteeism, and unreasonable demand for individual contract, violative, when E had rejected Ee's demands for improvements of wages, pensions and health benefits, had forbidden him to involve other Ees or to seek U assistance in regard to his demands, and discharged Ee only when he insisted that he would pursue the course of concerted action he had outlined contrary to E's order)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

General Warehouse Corp. **247 NLRB No. 142**
(discharge of vociferous leader of Ees opposed to waiving E's cost of living increase, assertedly because of his absenteeism, held violative where discharge came on heels of Ees' rejection of E's attempts to avoid cost of living increase, followed by E's changing its check cashing policy and eliminating rotating Ees for work they considered undesirable)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E tolerated habitual tardiness for a long time but then imposed crackdown on tardiness after onset of U)

Elco Electric, Inc. **JD-520-80**
(violation where E refused to hire applicant because of his filing grievance alleging U contract infraction by E on prior job rather than, as contended, because of his tardiness or poor productivity during prior employment with E)

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was no interferance with production, and in view of E's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

The Royal General Company **JD-17-80**
(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engagd in U activities)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(purported incidents of tardienss on Ee's part no defense to his unlawful discharge where such incidents occurred 1 or more months prior to discharge, and other Ees were routinely *guilty* of similar infractions w/o being disciplined or discharged)

N.L.R.B. v. Eaton Corporation **623 F.2d 479 (C.A. 6, 1980)**
(discharge of Ee unlawful since for filing grievance rather than for failure to give proper notice of absence in view of evidence Ee told fellow Ee he would be absent and information was passed along to foreman)

8387-0500 Accidents

K & B Mounting, Inc. **248 NLRB No. 071**
(no violation where U activist who had accident on icy road was laid off until *Spring* because she *can't handle this kind of driving in the winter*)

The Martin-Brower Company v. N.L.R.B. **623 F.2d 1161 (C.A. 6, 1980)**
(discharge of U adherent not violative, where he was discharged for third *preventable* accident)

8387-0550 Not real reason

Central Freight Lines, Inc. **250 NLRB No. 063**
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(suspension of driver, who had been involved in several accidents, held in reprisal for his U activities where other drivers had more serious accidents and were not disciplined, suspension closely followed Ee's request to attend Bd hearing and was in middle of number of discriminatory discharges, and latest accident was seized upon to disguise E's real motive in suspending Ee)

8387-0600 Overstaying vacation or leave

8387-0650 Not real reason

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(unauthorized vacation)

8387-1200 Arrest or conviction

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(discharge of Ee who was criminally convicted of harassment as result of his picket line conduct directed at E's president, not unlawful; there is a difference between threats and aggresive gestures between strikers and nonstrikers, and threats of violence against owner himself; moreover, there should be a measure of mutual respect between Bd and local cts, and it cannot be said that E seized upon conviction to give vent to anti-U animus in view of its reconciliation with Ee)

Anserphone, Inc. v. N.L.R.B. **632 F.2d 4 (C.A. 6, 1980)**

8387-1200—Cont.

(discharge of Ee violative, where despite her conflicts with fellow workers and fact that she was subject to discharge for long period prior to actual discharge, circumstances support conclusion that timing of her discharge was more a result of her U activity than her work performance)

8387-1300 **Assault on fellow employee**

Neptune Waterbeds, Inc. **249 NLRB No. 168**

8387-1350 Not real reason

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

8387-1500 **Coercion and intimidation of other employees**

Charles Batchelder Company, Inc. **250 NLRB No. 009**

Albertsons, Inc. - Southco Division **JD-(SF)-244-80**
(discharge of U adherent, not unlawful where for threatening to throw egg on other Ee's car)

8387-1550 Not real reason

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(violation where Ee was reprimanded, not as alleged because of her U activities during working hours, and harassment of other Ees, but because of her status as a leading U activist)

8387-1600 **Disparaging fellow employees**

8387-1650 Not real reason

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(discharge of Ee involved in protected activity, assertedly for making disparaging remarks regarding fellow Ees, and for failing to demonstrate initiative and follow instructions, unlawful, in view of E's pattern of unlawful conduct, prior discriminatory treatment of Ees, and timing and precipitate manner of discharge)

8387-1800 **Damage to goods and machinery because of carelessness**

8387-1850 Not real reason

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(suspension of formerly striking Ee assertedly because of damage to E's rental vehicle due to Ee's improper checking out of equipment before delivery to customer, unlawful, in view of E's animus toward ex-strikers, timing of suspension to Ee's activities as steward, absence of evidence of negligence on Ee's part and of precedent for punishment herein, E's predisposition to be punitive, and E's failure to place in evidence any written statement attributable to customer)

C & G Coal Corporation **247 NLRB No. 179**
(discharge of reinstated Ee assertedly for damaging truck door after arbitrator found Ee's initial discharge to have been defective, held violative where Ee had asked E if he could join U and E replied that *he started out with a four Ee U and that's just the way it was going to be*)

8387-2000 **Discourtesy to patrons**

8387-2050 Not real reason

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation, where Ee who was demanding that E pay its Ees their minimum legal wage and improve other terms and conditions of employment, was discharged assertedly because she antagonized customers by refusing to serve them)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**
(violation where soon after election E discharged U campaign organizer assertedly because E had received letter from customer complaining that U supporter kept the customer waiting while U supporter drank coffee)

8387-2200 **Customer complaints about work**

8387-2250 Not Real Reason

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(discharge of formerly striking Ee assertedly for servicing customer improperly, unlawful, where customer was brought in as ringer by E to provoke and discredit Ee and create pretext for discharge)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

8387-2300 **Dishonesty**

Wyman-Gordon Company **252 NLRB No. 168**
(discharge of U adherent for failing to notify E that he did not attend classes for which he was subsequently paid, violative, where E's record keeping difficult to understand, Ee offered to return unearned money to E which offer refused and anti-U attitude of E)

Shuttle Motor Corporation **JD-327-80**
(discharge of mechanic, not unlawful, where for general poor work record and specifically for submitting false warranty claim in order to avoid dispute with customer and be paid by manufacturer for labor; rather than for inquiring of state agency regarding legality of threatened *back-stubbing*, or as result of E's belief Ee had or was about to invoke NLRB processes)

Neckover Trailer Manufacturing Company **JD-256-80**
(Ee's attempted fraud of work time)

8387-2500 **Disloyalty**

8387-2550 Not real reason

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Suburban Ford, Inc. **248 NLRB No. 051**
(discharge of U adherent salesman for *disloyalty* because he tried to explain why he loaned demonstrator to customer, held violative where Ee was experienced salesman with unexceptionable performance record and E was attempting to harass Ee and cool ardor of all Ees for U representation)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(violation where moving cause for discharge of instructor was his remarks to student group regarding ongoing labor dispute rather than for disparagement of E, as alleged)

8387-2600 **Violation of confidentiality**

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(discharge of Ee not violative where for disclosure of confidential wage information rather than for attending U meeting)

High Performance Tube, Inc. **251 NLRB No. 181**
(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying lest of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

Bullock's **251 NLRB No. 082**
(discharge of Ee assertedly for demoralizing E's personnel by having copies of performance reviews in her possession and discussing them with fellow Ees, not unlawful, where dischargee surreptitiously and wrongfully obtained and copied fellow Ee's review, disseminated reviews' contents to another Ee, advising latter that her review was unfavorable in comparison with others, and dischargee's remarks leading Ee to believe that her job could be in a precarious position support conclusion that dischargee's conduct had disruptive and demoralizing effect on E's personnel)

8387-2800 **Dissension with other employees**

Giant Food, Inc. **252 NLRB No. 182**
(Ee who urged another Ee to aid U by supporting its objections to election involved in protected activity not harrassment and discharge violative; moreover, E's belief that had Ee engaged in misconduct does not justify discharge where in fact he had not engaged in such misconduct)

Albertsons, Inc. - Southco Division **JD-(SF)-244-80**
(discharge of U adherent, not unlawful where for threatening to throw egg on other Ee's car)

Albertsons, Inc. - Southco Division **JD-(SF)-244-80**
(discharge of Ee not unlawful, where discharged for making false statement to another Ee that other Ee was going to lose her job, with intention of upsetting her coworker and disrupting E's operation)

8387-2850 Not real reason

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

8387-3200 Falsification of production or timecard

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

8387-3250 Not real reason

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of known U adherent assertedly for cheating on his production count, unlawful in view of Ee's hostility to U, uncertain nature of evidence that Ee had cheated, minimal amount involved, failure to follow standard warning policy, Ee's record as top operator, fact that no operator had been discharged for such offense over 10 year period, and summary nature of discharge)

Grimes Manufacturing, Division of Midland-Ross, Inc. **250 NLRB No. 041**

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of U advocate-waiter, who had served as interpreter for U organizing committee assertedly for error in his sign-in time on time sheet, violative, where time sheet was closely monitored by headwaiter and testimony of headwaiter and manager to effect they had no knowledge of U waiter's U activity, was discredited)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(reinstatement of discriminatority discharged Ee ordered notwithstanding Ee guilty of falsifying time card as E had no knowledge of Ee's action until after discharge and no evidence presented to prove that Ee would have been discharged for this action)

8387-3400 Falsification of insurance claim

8387-3450 Not real reason

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

8387-3500 Falsification or alteration of employer's records

Pacific Intermountain Express **250 NLRB No. 180**
(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports; E promptly questioned the three Ees and discharged them when 2 refused to answer and 1 answered untruthfully)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(discharge of U advocate for falsifying work order 4 days prior to his termination, not violative notwithstanding Ee was discharged on same day he solicited for U; no evidence in record that anyone responsible for Ee's discharge knew that he engaged in U activity)

8387-3600 Making embarrassing or harmful statements about employer

8387-3650 Not real reason

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

8387-3800 Going into other departments

Anco Insulations, Inc. **247 NLRB No. 081**
(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

Aydin Corporation, Vector Division **JD-528-80**
(no violation for suspending U officer for going to another work area when she was told not to go)

8387-3850 Not real reason

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of known U adherents for absence from their work area, unlawful, where they were absent no longer than 10 minutes during their break period, their casual greeting of other Ees in another department did not constitute a work interruption, and no other Ee had been disciplined for asserted reason)

8387-4000 Hostility or bad attitude toward employer

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

8387-4300 Hot-headed, surly, and ill-tempered

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

8387-4400 Improper attire at work

8387-4450 Not real reason

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of bartender-U adherent, assertedly for being away from his work, using customers', rather than Ees', restroom and not being properly attired held violative where shifting reasons were adopted by E to conceal discriminatory motive)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff and offered Ee adherent severance pay to induce her to seek other employment)

8387-4500 Inefficiency

8387-4550 Not real reason

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(violation where Ee was terminated assertedly because his efficiency and performance deteriorated)

Elco Electric, Inc. **JD-520-80**
(violation where E refused to hire applicant because of his filing grievance alleging U contract infraction by E on prior job rather than, as contended, because of his tardiness or poor productivity during prior employment with E)

8387-4600 Malingering

Keister Coal Company, Inc. **247 NLRB No. 049**
(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

8387-4700 Violating specific instructions concerning work

8387-4750 Not real reason

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(discharge of Ee involved in protected activity, assertedly for making disparaging remarks regarding fellow Ees, and for failing to demonstrate initiative and follow instructions, unlawful, in view of E's pattern of unlawful conduct, prior, discriminatory treatment of Ees, and timing and precipitate manner of discharge)

Peavey Company **249 NLRB No. 110**
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(discharge of waitress, assertedly for refusing to abide by restaurant rules, engaging in gum chewing, and using business phone for personal calls, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

8387-4800 Insubordination

United States Steel Corporation **253 NLRB No. 083**
(suspension and subsequent discharge of Ee for refusing to meet with supervisor, not unlawful, since Ee was guilty of insubordination)

General Thermodynamics, Inc. **253 NLRB No. 021**

Wilson Freight Company **252 NLRB No. 128**

Blue Bird Body Company **251 NLRB No. 196**
(discharge of active U adherent for *goofing off* not violative where GC failed to prove by preponderance of evidence that discharge was motivated in whole or part by Ee's U activity)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(refusal to perform required task)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, intefered with foreman's job performance)

IML Freight, Inc. **249 NLRB No. 111**
(E's threat of termination to U steward, not unlawful, where U steward refused to return to work after discussion about grievance)

Bechtel Incorporated **248 NLRB No. 158**
(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Leeson Electric Corporation **247 NLRB No. 203**
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Aydin Corporation, Vector Division **JD-528-80**
(no violation for suspending U officer for going to another work area where she was told not to go and for refusing to see supervisor about pay check error w/o written note or U witness present to hear grant of permission to go as Ee cannot set conditions to compliance with order from supervisor)

Aydin Corporation, Vector Division **JD-528-80**
(no violation for suspending U officer for going to another work area when she was told not to go)

Datacomp Corporation, A Division of Herbick and Held Printing Company **JD-594-80**
(Ee's warning, suspension, and discharge not unlawful, notwithstanding fact that Ee was initially engaged in protected activity of charging E with racial discrimination where Ee lost protection of Act by opprobrius and insubordinate manner in which he pursued activity)

Industrial Chemical Corporation **JD-473-80**
(discharge of leading U supporter assertedly for insubordination, not unlawful, where Ee refused to obey instructions of his supervisor to perform work directly affecting vital operation of plant, there was no evidence of disparate treatment, and E had been insubordinate on several prior occasions)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

Signode Corporation **JD-161-80**
(discharge for public racially offensive insubordination toward supervisor, not unlawful)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(no violation, where E was discharged for insubordination and not because of her support of U)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(one-week and part-day suspension of discriminatee reinstated pursuant to Bd order after his initiating Bd proceedings not unlawful where suspensions were due to discriminatee's failure to follow E's instructions, substandard production, and unresponsive attitude)

8387-4850 Not real reason

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

St. Francis Hospital **252 NLRB No. 174**

Clayton Construction Corporation **250 NLRB No. 121**
(U steward's assertion that E's work assignment was contrary to contract and demand that it be rescinded found not insubordination meriting discharge)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(discharge of waitress, assertedly for insubordination, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

Lane Trenching, Inc. **247 NLRB No. 183**
(discharge of admittedly *good* Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(refusing to follow work instructions)

RMX, Inc. **JD-583-80**
(termination of Ee unlawful, notwithstanding E had legitimate cause to discharge Ee for his insubordination, where Ee would not have been discharged absent his U activity)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**

8387-4900 Emotional outburst

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

8387-5000 Interference with other employees

Datacomp Corporation, A Division of Herbick and Held Printing Company **JD-594-80**
(Ee's warning, suspension, and discharge not unlawful, notwithstanding fact that Ee was initially engaged in protected activity of charging E with racial discrimination where Ee lost protection of Act by opprobrius and insubordinate manner in which he pursued activity)

Albertsons, Inc. - Southco Division **JD-(SF)-244-80**
(discharge of Ee not unlawful, where discharged for making false statement to another Ee that other Ee was going to lose her job, with intention of upsetting her coworker and disrupting E's operation)

8387-5050 Not real reason

Maywood, Inc. **251 NLRB No. 139**
(visiting with other Ees and keeping them from doing their work)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(incident was a minor one not warranting discharge)

8387-5300 Leaving early

B. N. Beard Company **248 NLRB No. 016**
(discharge of truckdriver for quitting work early w/o permission, not unlawful, where Ee did so knowing that E was under pressure for economic reasons to have as much hauling work done as possible on day Ee left early)

8387-5300—Cont.

Cedarwood Care Center **JD-(SF)-315-79**
(walking off job w/o complying with order to report to supervisor proper grounds for discharge)

8387-5350 Not real reason

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(discharging card signer shortly before Bd-conducted election assertedly because of his early departure, violative in view of E's delay in discharging him, fact that on several occassions prior to his discharge Ee was unlawfully interrogated, and fact that E threatened that plant would shut down if U's campaign were successful)

8387-5500 Loafing

Classic Truck Rental Corp. **251 NLRB No. 056**
(suspension of U adherent who had filed charges with Bd, not unlawful, in view of Ee's *stealing time* by wasting time on job and continuing disregard for company rules despite several warnings, thereby prompting E to file notice of intent to arbitrate disciplinary action against Ee because of his inefficiencies as Ee and then suspending Ee after receiving arbitrator's advice to do so)

Pacific Intermountain Express **250 NLRB No. 180**
(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports; E promptly questioned the three Ees and discharged them when 2 refused to answer and 1 answered untruthfully)

8387-5550 Not real reason

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

8387-5800 Loss or theft of employer's property

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(reinstate discharged Ee where information leading to discharge obtained during interview at which Ee was unlawfully denied his *Weingarten* rights; notwithstanding Ee confessed to theft of company property during interview as E relied solely on confession in making his decision)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(discharge of Ee, whose U activities were not remarkable, for failure to check on all items being taken out of store by fellow Ee resulting in loss to E found reasonable basis for E's belief in Ee's complicity with fellow Ee's theft or at least that she had been negligent)

Neckover Trailer Manufacturing Company **JD-256-80**
(blatant infraction of rule regarding use of scrap metal by Ees both as it related to use of material for own purposes and taking of material from plant)

8387-5850 Not real reason

McLane/Western, Inc. **251 NLRB No. 185**
(violation and interference where E was discharged, allegedly for breach of no-stealing rule by eating one cracker from damaged, unsalvageable carton, since E applied the rule in retaliation for Ee's suspected U support and as warning to other Ees)

8387-6000 Neglect of work

Logan Coca Cola Bottling Company **250 NLRB No. 164**

Schwebel Baking Company **249 NLRB No. 005**
(termination of U steward held lawful for refusal of proper order to return to work during walkout over firing of fellow worker, rather than for his handling of discharged fellow worker's grievance as alleged)

Norym Company, Inc. **JD-847-79**
(discharge of Ees, not unlawful, since for excessive restroom breaks rather than for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

8387-6050 Not real reason

L. R. Bob Spillers Painting Co. **JD-(SF)-169-80**
(discharge of Ee for vigorous pursual of duties as U steward violative)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(discharge of driver purportedly for leaving his bus unattended during working hours, unlawful, where alleged conduct occurred at least 1 or more months prior to discharge, and other Ees were routinely *guilty* of similar infractions w/o being disciplined or discharged therefor)

8387-6300 Negligence

Pork King Company, Inc. **252 NLRB No. 004**
(E's discharge of driver of delivery truck, not unlawful where discharge was for abandoning E's truck at unauthorized stop and leaving keys on seat so as to permit theft of valuable quantity of E's products, rather than for actively processing Ee grievances against E as U shop steward; E's decision to follow driver, which resulted in his discovery of driver's abandoning truck, was due to legitimate concern about driver's work habits in light of his earlier record)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(discharge of Ee, where U activities were not remarkable, for failure to check on all items being taken out of store by fellow Ee resulting in loss to E found reasonable basis for E's belief in Ee's complicity with fellow Ee's theft or at least that she had been negligent)

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Keister Coal Company, Inc. **247 NLRB No. 049**
(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

8387-6350 Not real reason

Lyman Steel Company **249 NLRB No. 040**
(discharge of U advocate assertedly because his machine had suffered oil leak held violative where other Ees were not punished for same offense and disparate treatment followed E's threat of reprisal for Ee's U activity)

8387-6400 Unwarranted complaints against supervisory personnel

8387-6450 Not real reason

Savannah Wholesale Company **251 NLRB No. 087**
(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

8387-6500 Use of obscenity or profanity or engaging in other indecent conduct

Hotel St. Moritz, Inc. **251 NLRB No. 015**
(no violation where E filed charges seeking discharge of hotel housemen's U delegate because of his threats and derogatory remarks to E when latter questioned his delegate status at E's meeting with lobby porter concerning porter's changing from membership in his own U to membership in delegate's U; accepting, *arguendo*, E's obligation to recognize and deal with delegate as representative of porter, who belonged to another U, delegate's actions were nevertheless so opprobrious as to render his conduct unprotected)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, intefered with foreman's job performance)

Browning-Ferris Industries of Ohio and Michigan, Inc. **JD-(SF)-313-80**
(discharge of U steward and other Ee not unlawful, notwithstanding fact that U steward was in process of attempting to secure paycheck for other Ee at time of discharges, where Ees invited E outside to fight, repeatedly threatened to beat him up and persisted in obscene threats and gestures)

Coastal Volkswagen, Audi **JD-(SF)-144-80**
(no violation where Ee who had felony record was fired not when E first learned of his U activity, but only after E learned of his personal conduct involving incident of heated and profane argument about burglary of which Ee was a strong suspect)

8387-6550 Not real reason

I/O Optics Limited, U.S.A. **251 NLRB No. 037**

8387-6550—Cont.

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(vulgar language used by Ee toward his supervisor found to be pretextual reason for discharge where such language had been used in past with no discipline being imposed and Ee was actively engaged in U solicitation)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E attempted to magnify common use of profanity in plant into dischargeable ofense)

Wilson Foods Corporation **JD-(SF)-272-80**
(suspending U president for replying *None of your goddam business* to supervisor who asked why he was on plant floor after shift and ordered him to *get the hell out* held violative, where swearing was common, language was part of *res gestae* of protected activity, Ee was gathering job data for International and E had refused data to U and Ee)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(discharge of Ee assertedly for useof vulgar language during confrontation with guards at plant gate over Ee's display in his vehicle of sign urging boycott ofE's product, unlawful; although Ee's conduct was vulgar and not to be condoned, it was an example of *impulsive behavior* for wich some leeway is permitted under Ee's right to engagein concerted activity; moreover there was no other instance ofdischarge of Ee for use of vulgar language alone)

8387-6700 Refusal to accept job assignment or promotion

Church's Fried Chichen, Inc. **JD-(SF)-301-79**

8387-6750 Not real reason

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E attempted to magnify simple complaint about a job assignment into a refusal to perform the job)

8387-6800 Refusal to work overtime

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's discharging Ees for refusing to work overtime, not unlawful, notwithstanding fact that U objected to absence rule, where E's institution of absence rule was found to be lawful)

8387-6850 Not real reason

Reinauer Fuel Transportation Corporation **251 NLRB No. 210**
(discharge held solely for Ee's U activities and refusal to work overtime held to play no role in the discharge; no Ee had ever been disciplined for refusal to work overtime, Ee did not state at any time that he would no longer work overtime, and there was no conclusive evidence Ee had refused to work overtime as alleged)

8387-7000 Profanity or abusive language used against supervisor

General Thermodynamics, Inc. **253 NLRB No. 021**

Clark Equipment Company **250 NLRB No. 178**
(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

8387-7050 Not real reason

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

8387-7100 Harassing, threatening, etc. of supervisors

Thermo King Corporation **247 NLRB No. 048**
(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

The Pacific Telephone and Telegraph Company **JD-(SF)-322-80**
(discharge of U steward, not unlawful, notwithstanding evidence of supervisor's ill will toward him for presenting grievances, where steward's subsequent threat to have supervisor's throat cut was found sole reason for discharge)

8387-7400 Refusal to work assigned hours

8387-7450 Not real reason

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

8387-7500 Sales record low

8387-7550 Not real reason

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

8387-7800 Sleeping on job

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(discharge of known U supporter for sleeping on worktime, not violative notwithstnding contention that E reprimanded rather than discharged one other Ee for sleeping on worktime, where E terminated 34 Ees in past 10 years for sleeping on job, and sleeping on job was against company policy; moreover, U supporter who had not asked for permission as required by E to take his break in a work area was discovered sleeping in secluded area of plant 10 minutes after his break was scheduled to end, and had to be awakened by supervisor)

Savannah Wholesale Company **251 NLRB No. 087**
(discharge of Ee assertedly for sleeping on job, not unlawful, even taking into consideration fact that Ee brought U into plant, E had knowledge of his U activity, and discharge occurred in same month that first U meetings were held for Ees; sleeping on job was actual cause of discharge, and there was no evidence of condonation or evidence that other Ees were permitted to engage in such activity)

Sweetheart Cup of Texas **251 NLRB No. 057**

8387-7850 Not real reason

American Metal Processing Company **JD-159-80**
(discharge of known U organizer allegedly for sleeping on job, unlawful since, under ordinary circumstances, this was not dischargeable offense and a few days later another Ee was caught sleeping while still on the clock, and nothing happened to him)

8387-8000 Smoking

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(Ee was discharged for smoking on job and not because of U activity, where Ee had once been previously warned about smoking w/i work area, he admitted he was smoking near solvent container, an Ee had previously been burned by solvent coming into contact with hot engine, and E had been warned by fire officials regarding smoking in work area; moreover, there was no prior history of trouble between E and U)

8387-8050 Not real reason

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

8387-8500 Troublemakers and agitators

Albertsons, Inc. - Southco Division **JD-(SF)-244-80**
(discharge of U adherent, not unlawful where for threatening to throw egg on other Ee's car)

Albertsons, Inc. - Southco Division **JD-(SF)-244-80**
(discharge of Ee not unlawful, where discharged for making false statement to another Ee that other Ee was going to lose her job, with intention of upsetting her coworker and disrupting E's operation)

8387-8550 Not real reason

Levi Strauss & Company **JD-158-80**

8387-8800 Uncooperativeness

Pacific Intermountain Express **250 NLRB No. 180**
(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports; E promptly questioned the three Ees and discharged them when 2 refused to answer and 1 answered untruthfully)

8387-8850 Not real reason

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

8387-9000 Union or other concerted activity no defense

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

8387-9200 Unauthorized behavior on job

J. J. Security, Inc. **252 NLRB No. 180**
(refusal to reinstate unlawfully discharged Ee not violative where Ee engaged in conduct on E's premises in violation of E's rules)

8387-9300 Unsatisfactory work

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(discharge of leadmen not violative where he had received three written warnings of deficiencies in job performance and had been offered another job in unit)

Classic Truck Rental Corp. **251 NLRB No. 056**
(E's filing of notice of arbitration with regard to its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, since E's action was not prompted by Ee's U activities or filing of charges with Bd, where Ee's misconduct on job and disregard for company rules justified E's action)

La Habra Dodge, Inc. **251 NLRB No. 001**
(discharge of Ee mechanic at automobile dealer for doing faulty work, not unlawful, where E had no knowledge of Ee's U activities)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(discharge of formerly striking Ee assertedly for failing to detect errors in vehicular rental contracts made by other ex-strikers, unlawful, where there was no evidence that Ee exercised less scrutiny in reviewing work of ex-strikers than nonstrikers, and Ee's even-handedness is apparent from long period of time it took E to build case against her)

State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company **JD-176-80**
(discharge of U adherent, not unlawful, where Ee repeatedly showed poor judgment in preparing estimates for automobile repair claims)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(discharge of U adherent who was poor Ee not violative where E had decided to discharge Ee before it had any knowledge of U activity)

8387-9350 Not real reason

GE's Trucking, Inc. **252 NLRB No. 131**
(termination of Ee allegedly because of decline in quantity of product E was carrying, and Ee's failure to follow E's trucking delivery rules, unlawful in view of E's admitted laxity in enforcing rules, lapses by other Ees, and E's U animus; selection for termination for valid economic reasons of Ee can only be explained as motivated by E's concern that Ee's influence as leading U advocate would lead to unionization)

Savannah Wholesale Company **251 NLRB No. 087**
(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because they devoted too much time in repairing E's vehicle as result of which customer was not serviced, unlawful, where Ees were known active U supporters, they had attended U meeting shortly before layoff, and E had profound U animus)

Peavey Company **249 NLRB No. 110**
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(discharge of Ee w/i very short time E knew Ee was U officer held violative where E's reasons for discharging Ee were shifting and somewhat contradictory)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(violation where Ee was terminated assertedly because his efficiency and performance deteriorated)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ee's mistakes on job were isolated, and similar mistakes were not subject of warnings or discharge and were not uncommon at plant)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(Ee's performance and attitude)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(E's statement to supervisor that he should find out who had been talking about U and get rid of her proof that motivation was illegal and fact that discriminatee was poor Ee irrelevant)

8387-9500 Violence or threat thereof

Clark Equipment Company **250 NLRB No. 178**
(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

Clark Equipment Company **250 NLRB No. 178**
(no violation by discharge of leader of U organizing campaign for so recklessly driving truck that he struck a plant security officer and later threatened to *get him*)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(physical assault upon supervisor held cause for discharge, where discharge was immediate and spontaneous reaction to attack, a normal reaction of supervisor with such authority, regardless of aggressor's U sympathies)

Schwebel Baking Company **249 NLRB No. 005**
(discharge of U steward held lawful for assault on company official, rather than, as alleged, for carrying out his duties as U steward)

Thermo King Corporation **247 NLRB No. 048**
(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

Routh Packing Company, Inc. **247 NLRB No. 053**
(requirement of reinstatement held precluded by picketer's threats of bodily harm to nonstriker's wife and participation in threats to nonstriker)

Browning-Ferris Industries of Ohio and Michigan, Inc. **JD-(SF)-313-80**
(discharge of U steward and other Ee not unlawful, notwithstanding fact that U steward was in process of attempting to secure paycheck for other Ee at time of discharges, where Ees invited E outside to fight, repeatedly threatened to beat him up and persisted in obscene threats and gestures)

Neckover Trailer Manufacturing Company **JD-256-80**
(threats against supervisors)

8387-9550 Not real reason

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**

8387-9550—Cont.

(discharge of formerly striking Ee after engaging in fight with nonstriker, unlawful, where fight had been arranged by E as device to purge Ee, in view of E's animus toward ex-strikers and general predisposition to discharge them, E's encouragement of conduct to provoke Ee into violent conduct, and haste with which Ee was fired while nonstriker was not even warned about his part in fight))

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(discharge of formerly striking Ee assertedly for threatening violence against E's wife and house, unlawful, where Ee's denial of threat was credited, prior to discharge E made statement that he would have gotten rid of Ee but for U, and E exhibited virulent hostility toward ex-strikers generally)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

Lester Industries, Inc. **JD-97-80**
(suspension of chief U protagonist purportedly for threatening anti-U fellow Ee, unlawful, where E seized upon anti-U Ee's belated, implausible account of purported threat as pretext for suspension of Ee for engaging in U organizing and protected concerted activity)

8387-9700 Illegal activity

High Performance Tube, Inc. **251 NLRB No. 181**
(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying lest of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

8387-9800 Sabotage

AAR Technical Service Center **249 NLRB No. 176**

8387-9900 Other

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(Ee's conduct consisting of what E termed use of abusive language, total attitude, and improper performance of work duties held not to justify discharge, where E, through its ULPs, made Ee's working conditions burdensome and then relied on Ee's response to justify discharge, and Ee's conduct was not so unreasonable in relation to E's provocative ULPs; E will not be allowed to transfer onus for discharge to Ee, for to do so would permit E to benefit from its wrongdoing)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of Ee for engaging in *horse play* with air hose, which was potentially dangerous to fellow Ee, not unlawful, where E investigated incident, thereupon reduced discharge to suspension, and exercised reasonable exercise of its business judgment in maintaining proper discipline with due regard for safety of its Ees)

8390 UNSATISFACTORY QUALIFICATIONS OR CHARACTERISTICS

8390-1700 Disease and physical incapacity

8390-1750 Not real reason

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(where known U activist with chronic back problems was limited by doctors to doing *lighter lifting with no lifting above her head,* E's discharging her assertedly *because she is unable to perform her job due to personal physical reasons,* violative; E had granted leaves of absence to other Ees with medical problem w/o discharging them)

8390-3300 Failure to qualify for bond or insurance

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(Bd's finding that discharge of Ee violative not supported by substantial evidence where his driving record resulted in problem in insuring him; further, ALJ's finding that there was insufficient evidence of discriminatory motive entitled to weight)

8390-3350 Not real reason

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

N.L.R.B. v. Laredo Packing Company **625 F.2d 593 (C.A. 5, 1980)**

8390-5000 Incompetence

8390-5050 Not real reason

Lane Trenching, Inc. **247 NLRB No. 183**
(discharge of admittedly *good* Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

8390-7500 Failure to qualify due to government regulation

8390-7550 Not real reason

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(Ee underage to be employed in hazzardous occupation)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

8393 VIOLATION OF RULES AND STANDARDS

Classic Truck Rental Corp. **251 NLRB No. 056**
(suspension of U adherent who had filed charges with Bd, not unlawful, in view of Ee's *stealing time* by wasting time on job and continuing disregard for company rules despite several warnings, thereby prompting E to file notice of intent to arbitrate disciplinary action against Ee because of his inefficiencies as Ee and then suspending Ee after receiving arbitrator's advice to do so)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(suspension of Ees by administrator of U council on ground that meeting called by Ees' U and held at parent organization's facility violated council's policy curtailing Ees' contacts with such organization, unlawful, where administrator knew that meeting was called for purpose of addressing fellow Ee's discharge, which was protected activity; unlawful motivation was shown by attempt, following suspensions, to prevent Ees from meeting with their attorney; and administrator's concern about U meeting included Ees' *taking issue* with his disciplining of Ees and soliciting aid from other sources)

8393-0100 Generally

8393-0155 Rule discriminatorily or arbitrarily applied

Gladwin Corporation **JD-565-80**
(sudden layoff of U activist assertedly for violation of E's rule restricting carrying and consumption of alcoholic beverages oncompany premises held violative where Ee was seen drinking beer on his own time on E's parking lot, an admitted borderline violation, which behavior was treated w/same severity as obviouus case of intoxication 12 years previously)

8393-0166 Rule invalid

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

8393-2500 Discipline always meted out for breach of rule

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

8393-5000 Types of rules

8393-5007 Prohibition against interfering with production

United States Steel Corporation **253 NLRB No. 083**
(reassignment of Ee who refused to repair crane w/o *safety men* held not due to his filing charges or protected activity as contended but to his impeding work in violation of the contract with his demands and causing work stoppage)

8393-5013 Prohibiting unauthorized presence in work area

Aydin Corporation, Vector Division **JD-528-80**

8393-5013—Cont.

(no violation for suspending U officer for going to another work area when she was told not to go)

Wilson Foods Corporation **JD-(SF)-272-80**
(after E refused to supply data on job classification, brackets assigned to jobs, and wages to U president per request by International, his speaking with Ees on plant floor to obtain data, after end of shift, held protected, notwithstanding he violated plant rule by not securing foreman's permission to talk on plant floor)

8393-5027 No-solicitation and/or no-distribution

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(warning Ee for failure to comply with unlawful overly broad no-solicitation rule which was not clarified to permit solicitation during break times and Ee had been soliciting only on his own time, violative)

Centre Engineering, Inc. **253 NLRB No. 028**
(suspension of Ee for distributing U literature in work area during working time not violative)

Neptune Waterbeds, Inc. **249 NLRB No. 168**
(discharge of U adherent not unlawful where he was shown to have many work-related problems including solicitation in working areas of plant in violation of no-solicitation rule)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purposes proscribed by rule were tolerated at plant)

8393-5030 Confidentiality

Texas Instruments Incorporated **247 NLRB No. 037**
(discharges based on E's invalidly applied dissemination of classified material rule, violative, since Ees were penalized for asserting their statutory rights by publishing confidential area wage survey; application of rule interfered with those rights and tended to inhibit Ees' protected activity)

8393-5045 Reporting absences

Herman Brothers, Inc. **252 NLRB No. 121**
(discharge of driver, unlawful, where motivating factor in action was his circulating letter opposing provision in proposed bargaining agreement which would substitute mileage for number of hours worked as basis for computing drivers wages, rather than for three consecutive days failing to report his availability for work while awaiting call from dispatcher)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(discharge of waitress, assertedly for failure to call in on disignated day off, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

N.L.R.B. v. Eaton Corporation **623 F.2d 479 (C.A. 6, 1980)**
(discharge of Ee unlawful since for filing grievance rather than for failure to give proper notice of absence in view of evidence Ee told fellow Ee he would be absent and information was passed along to foreman)

8393-5047 Leave of absence rules

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**
(discharge of Ee not unlawful, since for unauthorized absence rather than for acting as U observor at election and attending U meetings, where Ee had received pay raise before and after election, and Ee had not asked for time off but simply informed supervisor she was taking day off)

8393-5048 Break time or use of restroom

Norym Company, Inc. **JD-847-79**
(discharge of Ees, not unlawful, since for excessive restroom breaks rather than for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

8393-5050 Safety Rules

Vogt-Conant Co. **248 NLRB No. 027**
(discharge of truckdriver who was guilty of numerous incidents of improper and unsafe driving during his period of employment, not violative, notwithstanding that previously Ee was threatened with discharge if he persisted complaining about E's elimination of certain contractual overtime payments; E had in past discharged other Ees for unsafe driving, E bore no animus against complaining Ees generally, and Ee ceased his protests 3 weeks before his discharge and gave E no further cause for concern)

Leeson Electric Corporation **247 NLRB No. 203**
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

The Martin-Brower Company v. N.L.R.B. **623 F.2d 1161 (C.A. 6, 1980)**
(discharge of U adherent not violative, where he was discharged for third *preventable* accident)

8393-5060 Rule regarding searching employees property

Stanley M. Feil, Inc. **250 NLRB No. 065**
(discharge of U adherent for refusing to allow her purse to be searched by supervisor, rather than by security guard, upon leaving Es warehouse, not violative, absent discriminatory motivation; fact E's vice-president offered to reemploy adherent and then withdrew offer not evidence of discriminatory motivation where withdrawal because vice-president felt personally insulted)

8393-5063 Rule against leaving work without permission

Levi Strauss & Company **JD-158-80**

8393-5065 Rule concerning employees' personal use of company material

Neckover Trailer Manufacturing Company **JD-256-80**
(blatant infraction of rule regarding use of scrap metal by Ees both as it related to use of material for own purposes and taking of material from plant)

8393-5070 Rule against drinking of alcoholic beverages on job

Gladwin Corporation **JD-565-80**
(sudden layoff of U activist assertedly for violation of E's rule restricting carrying and consumption of alcoholic beverages oncompany premises held violative where Ee was seen drinking beer on his own time on E's parking lot, an admitted borderline violation, which behavior was treated w/same severity as obvious case of intoxication 12 years previously)

8393-5072 Rule against wearing union insignia

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while she was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

8393-5083 Rule concerning work assignments

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

8393-5085 Rule against personal conversations during working time

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

Wilson Foods Corporation **JD-(SF)-272-80**
(after E refused to supply data on job classification, brackets assigned to jobs, and wages to U president per request by International, his speaking with Ees on plant floor to obtain data, after end of shift, held protected, notwithstanding he violated plant rule by not securing foreman's permission to talk on plant floor)

8393-5086 Rule against use of profanity or improper behavior

Thermo King Corporation **247 NLRB No. 048**
(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

8396 VOLUNTARY QUIT OR LAYOFF

Newport News Shipbuilding & Dry Dock Co. **253 NLRB No. 072**
(Ee found to have quit rather than have been constructively discharged for U activity where after period of light duty due to injury, she was transferred back to her own more onorous position; Ee was fully healed, other Ees performed same work, and Ee had originally asked to be placed in that position)

Herman Brothers, Inc. **252 NLRB No. 121**
(driver not deemed to have voluntarily quit pursuant to rule that would consider drivers as having quit where they failed to report their availability for work for three days, but rather discharged, since motivating factor in E' action was driver's circulating letter opposing provision in proposed bargaining contract which would substitute mileage for number of hours worked a basis for computing drivers' wages)

8396—Cont.

La Habra Dodge, Inc. **251 NLRB No. 001**
(held voluntary quit and not constructive discharge notwithstanding painter's helper in accordance with industry custom assumed he too was terminated when E discriminatorily discharged painter with whom he worked as E never discharged helper and E was his E and not painter)

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(E's insistance that U adherent with back injury had quit his job rejected and held constructive discharge where Ee was injured on job, notified E, saw physician and received workman's compensation)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(defense that Ee (U card signer) *quit* rather than was discharged for U activity, rejected where E not allowed to return to work from being off sick after E knew Ee was U adherent)

Sentry Investigation Corp. **249 NLRB No. 130**
(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge even in absence of words; where such can be reasonably inferred from circumstances)*

Conagra, Inc. **248 NLRB No. 085**
(elimination of U adherent's job as *bathroom relief,* not unlawful, where necessity for position was eliminated by remodeling, adherent was offered another job by E but rather, than bump incumbent took voluntary layoff and went on unemployment compensation, and upon expiration of unemployment benefits returned to work in another position)

8399 GRIEVANCE/ARBITRATION PROCEEDINGS AND/OR AWARD

Newspaper Printing Corporation **JD-203-80**
(while failure to arbitrate discharge violative of 8(a)(5), ALJ refused to rule on whether discharge itself violative of 8(a)(3) where GC failed to allege discharge violation of Act and GC's position that parties should be required, as remedy for 8(a)(5) violation to go to arbitration concerning discharge)

530 EMPLOYER OBLIGATION TO BARGAIN

0100 GENERALLY

0167 APPROPRIATENESS OF UNIT AS PREREQUISITE

N.T. Enloe Memorial Hospital **250 NLRB No. 078**
(withdrawal of recognition and refusal to bargain because of doubt as to appropriateness of bargaining representative violative where in fact association was appropriate organization for collective bargaining)

A--1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. **250 NLRB No. 034**
(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable waiver* standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

2000 CONDITIONS PRECEDENT TO OBLIGATION TO BARGAIN

2025 REQUEST FOR RECOGNITION AND BARGAINING

2025-0100 Generally

2025-0167 Bargaining demands not waived by filing petition

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(filing of representation ptn is not proper demand for recognition or bargaining)

2025-0183 Request not necessary where futile

Sunnyland Refining Company, Inc. (International Brotherhood of Boilermakers, Shipbuilders, Forgers and Helpers, AFL-CIO) **250 NLRB No. 146**
(once U requests bargaining and an E states it is refusing to bargain in order to test the certification, it is futile and unnecessary for U to continue to request bargaining)

2025-0190 Failure to request

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(E did not violate Act by refusing to bargain where U never made proper demand for bargaining in an appropriate unit)

2025-5000 Forms of request

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(demand for recognition made where U representative informed E U represented majority of Ees and proffered recognition agreement and demand letter, notwithstanding E refused to read documents, since their import was clear)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(U's demand for recognition held inadequate where it was made vocally through bull horn during course of rally in front of E's premises, and it was not established that responsible officials of E were aware of demand)

2025-6700 Continuing request

Dardanell Enterprises, Inc. **250 NLRB No. 050**
(*Bd treats request as continuing, at least for period of certification year* further *explicit refusal to bargain made in order to test certification will be considered as continuing refusal to bargain*)

2050 Majority status of representative

2050-1200 Majority status as prerequisite

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(E held obligated to recognize and bargain with U for prospective as well as current jobsites, since (a) E's Ees had tendered their designation cards w/i determinative payroll period, and (b) U had signed authorization cards from majority in unit of E's permanent Ees when it demanded recognition, so that contract was not 8(f) prehire contract valid only for current jobsite as E contended)

2050-2500 Determination of status

English Brothers Pattern and Foundry **253 NLRB No. 067**
(where U made demand for recognition and E polled Ees, discovering majority support for U, never indicated any doubt as to majority status, never asked for election, it is bound by results of poll and failure to bargain violative)

Construction Erectors, Inc. **252 NLRB No. 045**
(Bd held U achieved majority status under 9(a) in stable unit at time of execution of multisite contract, where payroll charts established a permanent complement of at least six unit ironworkers, U dispatched through its hiring hall at least a majority of E's ironworkers, such referrals switched from one project to another, and U-security provisions applied to all unit Ees' thus stable work force on date off execution of contrract was distinguishable from those hired by a construction industry E on project-by-project schedule with no personnel carryover)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(fitters not counted for purpose of determining if E which was alleged successor had hired majority of Ees in alterations unit at alleged predecessor E since fitters had been historically excluded from alterations unit at alleged predecessor)

2075 PROOF OF DESIGNATION

2075-0100 Generally

Carlina Knitting Co., Inc., et al. **JD-321-80**
(card signed after demand not to be counted)

2075-0175 Testimony of employees or union representative

Tartan Marine Company **247 NLRB No. 073**
(lost card not counted since w/o card it cannot be determined if individual authorized U to represent him on any of the critical dates litigated)

2075-6700 Authorization cards

2075-6701 Generally

Carlina Knitting Co., Inc., et al. **JD-321-80**
(card of Ee sent to seek employment with E in effort to organize plant should be counted and she should be included in unit, where there was no evidence that she took job solely to organize, that her job was only temporary or that she was not bona fide full-time Ee; she had same duties, worked same hours and earned same rate of pay as any other unit Ee)

2075-6717 Form of card

2075-6717-3300 Single purpose designation of representatives

Tartan Marine Company **247 NLRB No. 073**
(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

2075-6733 Proof of validity

2075-6733-2000 Method of authentication

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(secondary evidence is sufficient to establish identity of card signer and his/her act of signing card; witness providing such secondary evidence need not have actually seen Ee sign card so long as he can identify the card as having been executed by signatory Ee)

2075-6733-2014 Testimony of solicitor

Gordonsville, Industries, Inc. **252 NLRB No. 054**

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where signer identified card and signature, fact that solicitor did not witness his signature does not invalidate card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although solicitor did not witness signing of Ee's card, solicitor's testimony that Ee delivered completed card to him indicates that Ee designated U)

2075-6733-2028 Testimony of signer

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(*convoluted* testimony of U card signer as to when card was signed did not impugn authenticity of card where there was no showing by E that signature was induced by misrepresentation or coercion or other fraudulent methods)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(card counted which did not bear signer's signature, but rather her name printed, when submitted, where U later obtained her signature on another card and Ee testified and identified original card as hers)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(validity upheld where Ee testified to signing and returning card to U, notwithstanding U either never received it or misplaced it)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where Ee identified card and signature fact that signature printed rather than written in script does not invalidate card)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where signer identified card and signature, fact that solicitor did not witness his signature does not invalidate card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ee's card which was lost counted as valid designation of U when he testified he signed card and his name appeared on E's list of U supporters who had identified themselves as such to E; testimony of Ee is itself probative of U's majority status in circumstances where card has been misplaced)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(where Ee had signed second card after U's demand for recognition, his first card signed prior to U's demand counted as valid designation of U, even though such card was lost, where E testified that he signed card before demand date and his testimoney was corroborated by other evidence)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although misdated, card held valid where Ee credibly testified she signed card well before date of U's demand for recognition, and signer's name appeared on E's list of U supporters dated prior to U's demand)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to whether it was signed before U's demand for recognition not counted in view of signer's inconsistent testimony, fact that he did not know date, and GC's failure to call signer to elucidate matter)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(Ee's signature found valid where, although Ee could not read the card, he testified that his brother-in-law, a card signer himself, read his card to him and that he signed it)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(-Ee's thoughts (or afterthoughts) as to why (she) signed a U card, and what (she) thought that card meant, cannot negative the overt action of having signed card designating U as bargaining agent)

2075-6733-2056 Testimony of witness to signing

Amber Delivery Service, Inc. **250 NLRB No. 016**

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(U authorization cards found valid where two card signers did not testify but U representative testified that he gave them U cards, and observed them read and sign these cards; authorization cards may be authenticate by the person who solicited its signer and observed him sign it)

2075-6733-2070 Signature comparisons

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(U authorization cards with signatures on *W-4* forms)

Permanent Label Corporation **248 NLRB No. 021**
(signature comparisons done by handwriting expert proper method of authenticating cards)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to date because assertedly bearing handwriting style of date different from that of telephone number on card held valid since writing sample taken at trial showed no significant difference from that of date on card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(even though Ee's testimony and comparison of his signature on W-4 form as well as other documents left considerable doubt as to who signed card, card held valid where Ee's U activity and presence of his name on E's list of U supporters is *convincing* and *reliable* evidence of Ee's designation of U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card held invalid where there was some discrepancy between signature on Ee's card and her W-4 form, Ee's name did not appear on E's list of U supporters, and there was no other corroborating testimony from Ee)

Consumer Enterprises, Inc. **JD-342-80**
(card not counted where signature on card and signatures on W-2 form and payroll checks showed total lack of similarity)

2075-6733-2084 Due course delivery of card to union

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(notwithstanding Ee denies mailing card, validity upheld where U in possession and pretrial affidavit contains admission that Ee mailed card)

2075-6733-4000 **Adequacy of card on its face**

2075-6733-4017 Unsigned or missigned cards

Pilgrim Life Insurance Company **249 NLRB No. 140**
(card counted which did not bear signer's signature, but rather her name printed, when submitted, where U later obtained her signature on another card and Ee testified and identified original card as hers)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where Ee identified card and signature fact that signature printed rather than written in script does not invalidate card)

2075-6733-4050 Undated or misdated cards

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(fact card undated does not destroy its validity. Collateral evidence may be relied upon to establish when undated card was signed and such evidence may include officially noticed Regional Office time and date stamps if card was submitted to Bd in support of R ptn)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(card dated 1 day earlier than its actual execution found valid where otherwise properly authenticated as such minor variances do not affect validity of card)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(card dated one month after date when U was alleged to have had majority status shown to have been misdated one month later than date when actually signed)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although misdated, card held valid where Ee credibly testified she signed card well before date of U's demand for recognition, and signer's name appeared on E's list of U supporters dated prior to U's demand)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to date because assertedly bearing handwriting style of date different from that of telephone number on card held valid since writing sample taken at trial showed no significant difference from that of date on card)

2075-6733-4059 Cards dated subsequent to date of request

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(Regional Office's stamped date of receipt on reverse side of U authorization cards w/o more, establishes that card was signed prior to date indicated by stamp)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(U authorization card signed on date subsequent to GC's self-imposed termination date)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to whether it was signed before U's demand for recognition not counted in view of signer's inconsistent testimony, fact that he did not know date, and GC's failure to call signer to elucidate matter)

2075-6733-4067 Language of card

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(where purpose of card is set forth on its face in unambiguous language, Bd will not in absence of misrepresentation inquire into subjective motives of signer to determine signer's intent; statements made to signers by solicitors that purpose of card is to get election, or that it is for U to come in, did not constitute misrepresentations since one purpose for which card may be used is to support R ptn; only where there is deliberate effort on part of card solicitor to induce prospective signer to ignore express language of card and by telling him sole purpose of card is to get election should card be invalidated)

Tartan Marine Company **247 NLRB No. 073**
(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(cards which clearly and concisely stated that signer wanted U, held valid)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(authorization cards which clearly and unequivocally on their face authorized U to represent Ees not invalidated by U's representative's explanation of Bd's requirements for election, nor would his informing Ees that he could not file ptn w/o signatures of 80% of Ees invalidated cards since he was merely stating his personal opinion or internal U rule designed to improve chance of success of campaign)

2075-6733-4083 Other

Gordonsville, Industries, Inc. **252 NLRB No. 054**

2075-6733-4083—Cont.

(notwithstanding that departmental designation was erroneous, and there were unaccounted for erasures on card, U card was valid absent some contradictory evidence that Ee's card bore forged signature or that purpose of card was misrepresented)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(Regional Office's stamped date of receipt on reverse side of U authorization cards w/o more, establishes that card was signed prior to date indicated by stamp)

2075-6733-9000 Unrevoked authorizations

Consumer Enterprises, Inc. **JD-342-80**
(card not revoked where Ee failed to notify U for revocation of card prior to U's request for recognition)

2075-6733-9500 Untimely revocation/withdrawal of card

Alumbaugh Coal Corporation **247 NLRB No. 112**
(Ees' request for revocation of his card dated day after U had majority status did not affect majority status on prior date)

2075-6767 Circumstances impeaching validity of cards

2075-6767-0100 Generally

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(revocations of authorization cards not recognized where occurred after E's program of ULPs began)

2075-6767-0150 Testimony of employees as to subjective intent of own designtion not admissible

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(where purpose of card is set forth on its face in unambiguous language, Bd will not in absence of misrepresentation inquire into subjective motives of signer to determine signer's intent; statements made to signers by solicitors that purpose of card is to get election, or that it is for U to come in, did not constitute misrepresentations since one purpose for which card may be used is to support R ptn; only where there is deliberate effort on part of card solicitor to induce prospective signer to ignore express language of card and by telling him sole purpose of card is to get election should card be invalidated)

Carlina Knitting Co., Inc., et al. **JD-321-80**
(subjective testimony adduced at hearing held unreliable and does not prove that Ees, when they signed card, did not want U, or that they were tricked into signing cards)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(-Ee's thoughts (or afterthoughts) as to why (she) signed a U card, and what (she) thought that card meant, cannot negative the overt action of having signed card designating U as bargaining agent)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

2075-6767-0800 Misrepresentation in solicitation

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(notwithstanding that departmental designation was erroneous, and there were unaccounted for erasures on card, U card was valid absent some contradictory evidence that Ee's card bore forged signature or that purpose of card was misrepresented)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(*convoluted* testimony of U card signer as to when card was signed did not impugn authenticity of card where there was no showing by E that signature was induced by misrepresentation or coercion or other fraudulent methods)

2075-6767-0814 For election only

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

Stanley M. Feil, Inc. **250 NLRB No. 065**
(card not counted where Ee informed it was to be used only to achieve election and that sole purpose of card was to get election; however, another card subsequently signed by same Ee counted where signed at time U officials present and no statements made that cards for sole purpose of obtaining election)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(statement that purpose of card is to make election possible is insufficient to render invalid unambiguously worded card)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(where most of Ees who signed cards participated in picketing is manifestation of their support for U and refutes charge that U told them signing card was only for purpose of election)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where language on card is unambiguous and provides that signer authorizes U to represent him, fact that solicitor alluded to use of card in obtaining election not enough to impeach validity of card because Ees were in no way directed to disregard express language on cards or otherwise assured that cards would only be used for purpose of getting election)

Tartan Marine Company **247 NLRB No. 073**
(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(authorization cards which clearly and unequivocally on their face authorized U to represent Ees not invalidated by U's representative's explanation of Bd's requirements for election, nor would his informing Ees that he could not file ptn w/o signatures of 80% of Ees invalidated cards since he was merely stating his personal opinion or internal U rule designed to improve chance of success of campaign)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(U's statement that cards would be presented to E to show Ees wished to be represeted by U and if majority of Ees signed cards, there would be an election not statement that card was to be used solely to get an election)

2075-6767-0842 Ambiguous statement

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(statement to Ee that signing card did not mean he was joining U but just to get U representative to explain purpose of U at meeting not sufficient to cancel unambiguous language on card which Ee read)

2075-6767-0856 Majority of employees already signed

Chester Valley, Inc. **251 NLRB No. 190**
(card signed by Ee who was told that everybody else had signed cards and that Ee was last to sign, while in fact 28 or 29 of 32 Ees had signed card, held valid)

2075-6767-0884 Other

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(*convoluted* testimony of U card signer as to when card was signed did not impugn authenticity of card where there was no showing by E that signature was induced by misrepresentation or coercion or other fraudulent methods)

Consumer Enterprises, Inc. **JD-342-80**
(no misrepresentation where statements made by U representative did not contradict message of card; Ee was clearly told that purpose of card was for U to take up fight with management for salary benefits)

2075-6767-1600 Coercion in solicitation

Gordonsville, Industries, Inc. **252 NLRB No. 054**

2075-6767-1617 Waiver of reduction of fees

Chef's Pantry, Inc. **247 NLRB No. 018**
where there is no prima facie showing of limited waiver of initiation fees, there is no requirement on GC to affirmatively prove universal waiver, before or after election)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(U's accepting authorization cards during organizing campaign w/o requesting initiation fees and in one case w/o requiring monthly dues did not invalidate cards where such arrangements only temporary)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(authorization cards not invalidated by statements that initiation fees would be $25 if card signed now but would be $50 if signed after U won election where statements were made by rank-and-file Ees absent evidence U initiated, adopted, condoned or was even aware of statements)

N.L.R.B. v. Mike Yurosek & Sons, Inc. **597 F.2d 661 (C.A. 9, 1979)**
(statement that any reduction in initiation fees would be available to all those signing authorization cards prior to execution of contract, lawful)

2075-6767-2500 Inducements or promises in solicitation

Lyman Steel Company **249 NLRB No. 040**
(authorization cards of assisted U no basis for claiming majority support where cards solicited and obtained by management after certain inducements granted to solicited Ees)

2075-6767-3300 Capacity of signer

2075-6767-3317 Inability to read or write

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where wife of illiterate Ee read card to him and signed it upon his direction, card valid as purpose adequately communicated)

2075-6767-4100 Solicitation by supervisors and/or management personnel

Lyman Steel Company **249 NLRB No. 040**
(authorization cards of assisted U no basis for claiming majority support where cards solicited and obtained by management after certain inducements granted to solicited Ees)

2075-6767-6600 Purported withdrawal of card

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**

2075-6767-6600—Cont.

(Ee's attempt to withdraw valid authorization card ineffective where revocation came after Ee attended meeting at which E made unlawful threats as E cannot derive benefit from its unlawful conduct)

2075-6775 Lost or misplaced cards

Tartan Marine Company **247 NLRB No. 073**
(lost card not counted since w/o card it cannot be determined if individual authorized U to represent him on any of the critical dates litigated)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ee's card which was lost counted as valid designation of U when he testified he signed card and his name appeared on E's list of U supporters who had identified themselves as such to E; testimony of Ee is itself probative of U's majority status in circumstances where card has been misplaced)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(where Ee had signed second card after U's demand for recognition, his first card signed prior to U's demand counted as valid designation of U, even though such card was lost, where E testified that he signed card before demand date and his testimoney was corroborated by other evidence)

2075-6784 Designation of merged union

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(consolidated U's use of authorization cards designating pre-merger U held not improper, where Ees were well-informed concerning merger and it must be inferred such fact was generally known among Ees, no card signers asked for return of their cards, Ees were not misled as to which U they wanted to represent them, and merger contemplated continuation of pre-merger U under new and different name)

2075-6785 Designation of international rather than local

CAM Industries, Inc. (Millmen-Industrial Carpenters Local 262) **251 NLRB No. 004**
(E's refusal to bargain with U after card check established majority status violative notwithstanding authorization cards designated only International, for Bd has long held that such card serves as valid designation of affiliate when there was no confusion as to identity of potential representative in minds of signers)

3000 EMPLOYER OBLIGATION TO RECOGNIZE ON REQUEST

3001 GENERALLY

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

3033 EMPLOYER RESPONSE TO REQUEST

The Arundel Corporation **252 NLRB No. 059**
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had assertedly precipitously recognized another U, not unlawful, where there was no unlawful intent, no logical basis exists for assuming that matter was rigged so as to exclude charging U since only 2 or 3 of 15 Ees would have been represented by it, and there was no contention raised based on Midwest Piping doctrine or on recognition of contracting U before E had representative complement in its employ)

The Arundel Corporation **252 NLRB No. 059**
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had recognized another U held not unlawful, where Ees sought by U were located substantial distance from other Ees covered by charging U's contract, they had no contact with such Ees, were employed in work situation in which their supervisor had considerable control over day-to-day personnel policies and employment, and they never expressed preference to be recognized by charging U rather than recognized U)

3067 MAY DECLINE TO RECOGNIZE WITHOUT ELECTION

3067-2500 Unless engaged in ULP precluding fair election

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(E's refusal to recognize and bargain with U which had card majority upon U's demand for recognition, unlawful, where refusal followed by commission of ULPs by E, particularly wage increases and attempts to redress greivances)

United Services For The Handicapped **251 NLRB No. 117**
(U card majority rather than election provides more reliable test of Ees' R desires where E's ULPs precluded holding of fair election)

Brooks Cameras, Inc. **250 NLRB No. 116**

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(no violation where E was found not to have committed ULPs alleged or other violations when it did not respond to U's demand for recognition)

3067-3700 Where not engaged in ULP precluding fair election

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(no obligation on E to bargain where only ULP charge dismissed and no election held)

3067-5000 Unless having independent knowledge of union majority

English Brothers Pattern and Foundry **253 NLRB No. 067**
(where U made demand for recognition and E polled Ees, discovering majority support for U, never indicated any doubt as to majority status, never asked for election, it is bound by results of poll and failure to bargain violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

4000 DURATION OF OBLIGATION TO RECOGNIZE AND BARGAIN

4020 CERTIFIED REPRESENTATIVE

4020-2000 Presumption of continued majority

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter ego's refusal to bargain with certified U violative)

4020-2033 Irrebuttably presumed for 1 year

SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions **252 NLRB No. 017**
(mtn for summary judgment granted, notwithstanding E assertedly refused to bargain on ground that it had been informed by written ptn that U did not have Ee majority, where alleged ptn was submitted w/i decertification year w/i which certified U's majority is irrebutably presumed)

Pennco, Inc. **250 NLRB No. 093**

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(where the only arguable date when bargaining agreement allegedly was reached between E and U fell w/i first year since Bd certification of U, E's question as to whether or not U represented majority of Ees in appropriate unit held w/o merit; in first year after certification, there is irrebuttable presumption that U has majority in appropriate bargaining unit)

4020-2033-2500 Absent unusual circumstances

Sunnyland Refining Company, Inc. (International Brotherhood of Boilermakers, Shipbuilders, Forgers and Helpers, AFL-CIO) **250 NLRB No. 146**
(eight-month gap between dates of U's requests for bargaining does not constitute such unusual circumstances that would relieve E from obligation to bargain throughout certification year)

4020-2033-5000 Where certification enforced in ULP proceeding, year dates from time employer commences bargaining

Firestone Wire & Cable Co., A Division of Firestone Tire & Rubber Company **249 NLRB No. 049**

Mid-America Media, Inc. **248 NLRB No. 165**
(initial period of certification construed as beginning on date E commences to bargain with U as recognized bargaining representative in appropriate unit)

Whitney Museum of American Art **247 NLRB No. 061**

4020-2067 Rebuttably presumed after 1 year

Libbie Convalescent Center a/k/a Libbie Rehabilitation Center, Inc. **251 NLRB No. 116**
(withdrawal of recognition 7 days following end of certification year violative absent actual evidence that U no longer represented majority of Ees)

Schmutz Foundry and Machine Company **251 NLRB No. 197**
(presumption not rebutted that certified U's majority status continued after E reopened facility and resumed same operations with same Ees where closure was to get rid of U, was temporary, and amounted to lockout of strikers who had struck when no new contract was negotiated to replace expired one and were now offering to return to work; reopening was continuation of enterprise, and Ees, unit and Ees' represented remained the same)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 155**
(where 43 Ees had voted against U, expression in discussions with E's supervisors little more than a year after election of dissatisfaction with U by

4020-2067—Cont.

33 Ees who, according to some testimony, had always been opposed to U found not to rebut presumption of U's majority status or to constitute objective basis for good faith doubt of U's continued majority status)

Pennco, Inc. **250 NLRB No. 093**

P. A. Incorporated **248 NLRB No. 077**
(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

N.L.R.B. v. Triplett Corporation **619 F.2d 586 (C.A. 6, 1980)**
(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Es' contention that Bd demanded more evidence than required to rebut presumption of U's majority support rejected; substantial evidence on record supported Bd's decision and policies and goals of Act are best served by enforcement of Bd's orders on Es' refusal to bargain)

4020-4000 Certification by Board

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(E must engage in one full year of bargaining following U's certification, regardless of any change in U's majority status; purpose of such insulated period is to give bargaining time to produce results and to promote stability in industrial relations, and if E refuses to bargain in good faith during certification year, Bd has power to extend or renew certification as remedy for 8(a)(5) violation)

4020-6000 Certification by other agency

Taylor Hospital **249 NLRB No. 031**
(refusal to bargain, unlawful where certification by state labor board met Bd's standards for granting comity and there was no newly discovered evidence presented or lack of due process or other grounds found for refusing comity, and long passage of time since certification due to E's exhausting its remedies, does not warrant relieving E of its bargaining obligation)

4025 REPRESENTATIVES UNDER CONTRACT

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

4025-2500 Majority status irrebuttably presumed during term of contract

Hageman Underground Construction; etc. **253 NLRB No. 007**
(non-U company found herein single E with company that executed 8(f) agreement held bound by agreement at all existing and future jobsites, where U at one time represented majority of Ees who constituted a permanent and stable group of backhoe operators and E did not generally hire on project-by-project basis; this established irrebutable presumption of majority status during length of contract and whether U enjoyed such status at time E repudiated contract irrelevant)

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Petroleum Contractors, Inc. **250 NLRB No. 094**

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

4025-5000 After expiration of contract

Westwood Import Company, Inc. **251 NLRB No. 162**
(*after the expiration of valid collective bargaining agreement, U enjoys a rebutable presumption that its majority representative status continues; such presumption may be effectively rebutted if E affirmatively establishes either (1) that at time of refusal to recognize U, U in fact no longer enjoyed majority support of unit Ees; or (2) that E's refusal was predicated on good faith doubt based on objective considerations; however, burden of rebutting presumption rests on party who would do so)*

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(where E had negotiated contract and it was automatically renewed, E's withdrawal of recognition and repudiation of contract's terms held unlawful for period after expiration of renewal period as well as period before expiration)

Petroleum Contractors, Inc. **250 NLRB No. 094**

Roza Watch Corp. **249 NLRB No. 036**
(refusal to recognize and bargain with certified U after expiration of contract, violative where E failed to rebut presumption or sustain good faith doubt of U's continued majority support following expiration of contract)

The Workshop, Inc. **JD-230-80**
(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's after E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(repudiation of contract unlawful, where 8(f) pre-hire agreement was transformed into bargaining agreement when U achieved majority status in relevant bargaining unit composed of Ees at E's two construction projects rather than on project by project basis, and rebuttable presumption of continuing majority status applied to unit notwithstanding potential change in its Ee composition and eventual relocation to other, future projects)

4025-7500 Contract of predecessor employer

Zylan Pontiac **252 NLRB No. 037**

4040 Voluntarily recognized representatives

4040-5000 Presumption of majority status

D'Angelo & Khan, Inc. **248 NLRB No. 062**
(where E entered into 8(f) prehire agreement with local when it first worked at jobsite w/i local's jurisdiction, its refusal to apply agreement to Ees at succeeding jobsite held not unlawful, since prehire agreement did not give rise to presumption of local's majority status at original jobsite; furthermore, regardless of local's majority status at original site, provisions of 8(a)(5) do not apply unless U can demonstrate its majority status at succeeding sites, record here showed Local did not have majority support at the succeeding site)

The Saloon, Inc. **247 NLRB No. 156**
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

4040-5037 Contract creates irrebuttable presumption of continuing majority status of union

Westwood Import Company, Inc. **251 NLRB No. 162**

N.L.R.B. v. West Sand and Gravel Company **612 F.2d 1326 (C.A. 1**
(enforcement of bargaining order denied where Bd's presumption of majority status was found to be unreasonable since clear and objective understanding of scope of bargaining unit or desire to engage in genuine collective bargaining was not evidenced in explicit agreement nor actual practice of E and Ees in past)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(withdrawal of recognition from U two months before expiration of its one-year bargaining agreement, violative even if replacement of discharged unit Ees gave rise to E's asserted good faith doubt as to U's majority; incumbent U enjoys virtually irrebutable presumption of majority status as long as its bargaining agreement is entitled to *contract bar* protection)

4040-5037-5000 Contract of predecessor employer

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(presumption of continuing majority notwithstanding predecessor E's recognition of U was forty years ago and there has been no subsequent election or certification)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980**
(contention that presumption of continued majority status should not b applied because E was successor E and not E who originally accorde voluntary recognition to U rejected; appearance of successor E canno deprive U of its presumptive majority status, and successor E is not relieve from duty to bargain with U which had presumptive majority because o pending contract; however, successor E would not have obligation to bargain if it entertained good faith doubt of U's majority status)

4040-5042 Presumption resulting from long bargaining history

N.L.R.B. v. West Sand and Gravel Company **612 F.2d 1326 (C.A. 1)**
(enforcement of bargaining order denied where Bd's presumption of majority status was found to be unreasonable since clear and objective understanding of scope of bargaining unit or desire to engage in genuine collective bargaining was not evidenced in explicit agreement nor actual practice of E and Ees in past)

4040-5090 Withdrawal from multiemployer bargaining unit

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(rebuttable presumption of majority U support survives Es' withdrawal from multi-E unit is grounded on policy determination by Bd that industrial peace is more like to be achieved by maintaining continuity in bargaining structure over enhancement of Ee free choice)

4050 SETTLEMENT AGREEMENT WITH BARGAINING PROVISION

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(E's contention that parties' settlement agreement neither manifested Bd determination that remedial action was necessary nor contained agreement to bargain and was exchange of contract terms having no effect on certification year, rejected, where part of agreement resolved some allegations in complaint)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(if settlement agreement is valid, E must bargain in compliance with it for reasonable time w/o regard to whether U continues to have Ee majority)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(notwithstanding E's claim of U's loss of majority, parties' settlement agreement entered into at time of hearing before ALJ and *surrounded by formalities* held to have extended certification year for reasonable period embracing time in which E engaged in unlawful refusal to bargain, and E's withdrawal of recognition during such period, unlawful; Bd properly characterized ALJ's action as *approval of the agreement,* which is required by Bd's R/R, and extent of Bd involvement manifested administrative determination that some remedial action was necessary to safeguard public interests)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(parties' settlement agreement held to have extended certification year for reasonable period, embracing time in which E engaged in unlawful refusal to bargain, where Bd properly found that compelling consideration for U's withdrawal of charges against E was quid pro quo for E's concessions in agreement as well as its attendant commitment to bargain)

4075 TERMINATION BY WITHDRAWAL OF RECOGNITION

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(E's withdrawal of recognition before contract expired and refusal to meet thereafter with U to negotiate new contract as requested, unlawful, where, contrary to E's contentions, bargaining unit did not cease, and U did not lose majority status)

Douglas & Lomason Company **253 NLRB No. 039**
(E's withdrawal of recognition and refusal to bargain, unlawful since they occurred in context of ULP's committed by E)

Western Truck Services, Inc. **252 NLRB No. 096**
(withdrawal of recognition, violative)

G and M Lath and Plaster Co., Inc. and Its Aler Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(corporation and its alter ego's repudiation of contract and withdrawal of recognition of U, violative)

Corrugated Structures, Inc. **252 NLRB No. 079**
(E's withdrawal of recognition from U with whom it had prehire agreement and execution of agreement with another U not violative, where there was no evidence that, at any relevant time, first U represented majority of substantial, stable work force of E's Ees at any of E's jobsites)

Construction Erectors, Inc. **252 NLRB No. 045**

Libbie Convalescent Center a/k/a Libbie Rehabilitation Center, Inc. **251 NLRB No. 116**
(withdrawal of recognition 7 days following end of certification year violative absent actual evidence that U no longer represented majority of Ees)

Cablevision Systems Development Company, A Partnership **251 NLRB NO. 176**
(violation where cable TV company had entered into negotiations with U representing cable company's subcontractor, and upon becoming subcontractor's successor, as found herein, it withdrew recognition and refused to bargain with U)

Schmutz Foundry and Machine Company **251 NLRB No. 197**
(withdrawal of recognition and refusal to bargain, unlawful where E failed to express its alleged doubt of U's majority status at time U requested bargaining after E announced forthcoming resumption of temporarily discontinued operations and where, when expressed, its doubts allegedly based on U's inactivity and Ee disaffection with U were not reasonably based on objective facts, and its own RM petition was not basis for doubt)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(where E had negotiated contract and it was automatically renewed, E's withdrawal of recognition and repudiation of contract's terms held unlawful for period after expiration of renewal period as well as period before expiration)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(multi-E association's counterproposal for contract renewal with unwavering demand that lounge musicians be excluded from bargaining unit despite their inclusion for past decade held unlawful withdrawal of recognition; belief that lounge musicians were independent contractors and U's agreement to defer lounge musicians issue does not justify or legitimaze E's withdrawal of recognition)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter-ego E who required rehired Ees to sign agreement stating that all fringe benefits would be paid directly to them instead of U and to hold them responsible for transfer of monies to U violated Act)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

P. A. Incorporated **248 NLRB No. 077**
(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

B. N. Beard Company **248 NLRB No. 016**
(E unlawfully withdrew recognition from Us before expiration of their contracts with E as evidenced by E's statements to the effect that E was getting rid of Us and would have no further contact with them)

The Saloon, Inc. **247 NLRB No. 156**
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(E's refusal to meet or arrange for future bargaining sessions after voluntarily recognizing U and agreeing to meet constituted unlawful withdrawal of recognition and refusal to bargain)

Carbon Specialties, Inc. **JD-510-80**
(attempting to withdraw recognition of U violative, where E and U had in being a bargaining agreement which when reduced to writing they were obliged to sign and which embraced recognition of U as bargaining agent; moreover, E had no basis to believe, as contended, that U had lost majority status in view of its promise and grant of benefits to induce Ees to defect from and disavow U)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Prairie Glove Division, Advance Glove Company **JD-164-80**
(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue,* or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

Atlan Inc. **JD-890-79**
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**

4075—Cont.

(notwithstanding E's claim of U's loss of majority, parties' settlement agreement entered into at time of hearing before ALJ and *surrounded by formalities* held to have extended certification year for reasonable period embracing time in which E engaged in unlawful refusal to bargain, and E's withdrawal of recognition during such period, unlawful; Bd properly characterized ALJ's action as *approval of the agreement,* which is required by Bd's R/R, and extent of Bd involvement manifested administrative determination that some remedial action was necessary to safeguard public interests)

N.L.R.B. v. Triplett Corporation **619 F.2d 586 (C.A. 6, 1980)**
(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequent withdrawal of recognition from Teamsters local, violative, since Teamsters local wascontinuation of Brewery Workers local)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

4080 TERMINATION OF OBLIGATION BY EMPLOYER BECAUSE OF REPRESENTATIVE'S LOSS OF MAJORITY STATUS

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal of recognition from U unlawful, notwithstanding fact that majority of E's Ees withdrew their support from U, since appropriate unit is multi-E association unit)

4080-0100 Generally

4080-0112 Loss of majority in recognized unit

Independent Association of Steel Fabricators, Inc.; etc. **252 NLRB No. 129**
(on ct remand, Bd held withdrawal of two Es from E association and execution of individual contracts with outside U, not unlawful, where each E possessed objective basis for good faith belief that incumbent U by date of execution of contract had lost support of majority of unit Ees)

Westwood Import Company, Inc. **251 NLRB No. 162**
(purchaser of business held successor and obligated to bargain with U representing Ees of seller where it engaged in same business at same facility and sold to substantially same customers as seller and employed all of supervisory and nonsupervisory Ees in their same job classifications; further, purchaser may not justify its failure to bargain on basis of or basis of good faith doubt of Us majority where it acquired business with full knowledge of seller's unlawful refusal to bargain)

4080-0125 Belief in loss of majority must be based upon objective consideration

International Medication Systems, Ltd. **253 NLRB No. 120**
(fact, that members of Ees' negotiating committee became disinterested in further participation in contract negotiations does not, alone, establish general Ee disinterest in being represented by U)

Independent Association of Steel Fabricators, Inc.; etc. **252 NLRB No. 129**
(on ct remand, Bd in issuing bargaining order overruled ALJ finding that member of E-association withdrew from association and executed contract with outside U while entertaining good faith doubt of incumbent U's continued majority, where record was devoid of any objective factors w/i E's knowledge on which it could have reasonably relied to conclude that majority of its seven Ees no longer supported incumbent U)

Independent Association of Steel Fabricators, Inc.; etc. **252 NLRB No. 129**
(on ct remand, Bd held withdrawal of two Es from E association and execution of individual contracts with outside U, not unlawful, where each E possessed objective basis for good faith belief that incumbent U by date of execution of contract had lost support of majority of unit Ees)

Westwood Import Company, Inc. **251 NLRB No. 162**

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 155**
(refusal to meet with U because of alleged doubt of U's continued majority status, unlawful where doubt was w/o sufficient objective basis or based on alleged but unproved admission by U)

Tri-State Carpenters & Joiners District Council **250 NLRB No. 125**
(refusal to bargain violative where 3 Ee unit offered U option of bargaining for them or not but indicated their desire to remain members and U reassured members in letter that it would represent them; which letter E knew about; this along with E's unilateral promulgation of unlawful Ee rule indicates E did not have reasonable grounds based on objective consideration to doubt U's majority status)

Petroleum Contractors, Inc. **250 NLRB No. 094**

Prairie Glove Division, Advance Glove Company **JD-164-80**
(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue,* or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(although subjective evidence may be used to bolster E's argument)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Es' contention that E's good faith belief that U no longer had majority support is all that is required to withdraw recognition, rejected; E's good faith doubt of U's majority status must be objective considerations and Bd's determination of whether defense is established will be upheld if supported by substantial evidence on the record)

4080-0150 Belief must be held in good faith and not advanced to gain time to undermine union

Carbon Specialties, Inc. **JD-510-80**
(attempting to withdraw recognition of U violative, where E and U had in being a bargaining agreement which when reduced to writing they were obliged to sign and which embraced recognition of U as bargaining agent; moreover, E had no basis to believe, as contended, that U had lost majority status in view of its promise and grant of benefits to induce Ees to defect from and disavow U)

N.L.R.B. v. Scott Printing Corporation and J&J House of Composition **612 F.2d 783 (C.A. 3)**
(remand to Bd to determine if Bd should have allowed E to assert good faith doubt in U's majority status because ALJ failed to find that U did not represent majority of Ees and Bd adopted ALJ's findings, thus there are no findings on record concerning good faith doubt defense)

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**
(standard is good faith doubt, proof is not required)

4080-0175 Withdrawal of recognition must be at appropriate time in relation to

4080-0175-8000 Contract

4080-0175-8033 Refusal to negotiate renewal of contract while continuing recognition under current one

The Workshop, Inc. **JD-230-80**
(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's after E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

4080-5000 Objective Considerations Evaluated in Establishing Employer's Doubt of Majority Status

4080-5001 Generally

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(withdrawal of recognition from U, violative, where E cannot base good faith doubt of U's majority status upon anti-U petitions or Ees subsequent filing of decertification petition since such Ee defections resulted from E's own misconduct)

Schmutz Foundry and Machine Company **251 NLRB No. 197**

4080-5001—Cont.

(withdrawal of recognition and refusal to bargain, unlawful where E failed to express its alleged doubt of U's majority status at time U requested bargaining after E announced forthcoming resumption of temporarily discontinued operations and where, when expressed, its doubts allegedly based on U's inactivity and Ee disaffection with U were not reasonably based on objective facts, and its own RM petition was not basis for doubt)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(cumulative effect of all evidence of loss of majority is what is relevant consideration, not each element)

4080-5012 Employer's information concerning employee dissatisfaction with union

4080-5012-1700 Through statements of employees

Kenyon Printing and Office Supply, Inc. **252 NLRB No. 154**
(anti-U comments of one Ee out of unit of five did not signify loss of majority or warrant good faith doubt)

Schmutz Foundry and Machine Company **251 NLRB No. 197**
(supervisor's report of conversation with one allegedly disaffected Ee and uninvestigated hearsay not valid basis for doubt)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 155**
(where 43 Ees had voted against U, expression in discussions with E's supervisors little more than a year after election of dissatisfaction with U by 33 Ees who, according to some testimony, had always been opposed to U found not to rebut presumption of U's majority status or to constitute objective basis for good faith doubt of U's continued majority status)

The Saloon, Inc. **247 NLRB No. 156**
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

Prairie Glove Division, Advance Glove Company **JD-164-80**
(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue*, or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

Cain's Generator and Armature Company, Inc. v. N.L.R.B. **628 F.2d 933 (C.A. 6, 1980)**
(enforcement granted where substantial evidence supported Bd's finding that none of factors relied upon by E justified withdrawal or recognition from U; E had relied upon U's alleged loss of majority status where (1) 10 of 23 Ees were new Ees, (2) lack of Ee requests for dues checkoffs--a voluntary action, and (3) several *unidentified* Ees had expressed dissatisfaction with U--, not objective factor in determining majority status)

4080-5012-4000 Poll by employee

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

4080-5012-6700 Written communications from employees

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

4080-5012-9900 From other sources

International Medication Systems, Ltd. **253 NLRB No. 120**
(fact, that members of Ees' negotiating committee became disinterested in further participation in contract negotiations does not, alone, establish general Ee disinterest in being represented by U)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 155**
(U official's statement in newspaper article that few of E's workers employed during election and on bargaining committee remained because of E's harrassment found not to constitute objective basis for good faith doubt of majority status since it was not admission by U of loss of majority but accusations of ULPs of E; moreover, E's asserted high turnover was not abnormal)

4080-5018 Employee support or lack thereof of incumbent's strike

Pennco, Inc. **250 NLRB No. 093**
(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

4080-5024 Checkoff authorizations

4080-5024-2500 Voluntary

Cain's Generator and Armature Company, Inc. v. N.L.R.B. **628 F.2d 933 (C.A. 6, 1980)**
(enforcement granted where substantial evidence supported Bd's finding that none of factors relied upon by E justified withdrawal or recognition from U; E had relied upon U's alleged loss of majority status where (1) 10 of 23 Ees were new Ees, (2) lack of Ee requests for dues checkoffs--a voluntary action, and (3) several *unidentified* Ees had expressed dissatisfaction with U--, not objective factor in determining majority status)

4080-5024-5000 Pursuant to union security

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

4080-5024-6700 Decrease in authorizations

N.L.R.B. v. Triplett Corporation **619 F.2d 586 (C.A. 6, 1980)**
(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**
(E had insufficient evidence to overcome presumption of continuing majority support where withdrawal of recognition based on decline in U dues check-off authorization in right-to-work state, high Ee turnover and U's seeming willingness to agree to almost any E contract proposal and fact that E acted in good faith is necessary but not sufficient element to justify withdrawal)

4080-5030 Internal union activities as evidence of lack of support

4080-5030-5000 Nonmembership in Union

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

4080-5036 Inactivity by union

4080-5036-2500 Lack of communication with employer

Schmutz Foundry and Machine Company **251 NLRB No. 197**

4080-5036-2500—Cont.

(U's failure to demand bargaining over closing and its effects not valid basis for doubt where closing was *fait accompli*)

4080-5042 Union animus

4080-5042-3300 Employer's ULP as affecting asserted reasonable grounds

Kuno Steel Products Corp. etc. **252 NLRB No. 127**
(E's defense to its refusal to offer strikers reinstatement was that U lost its majority, rejected, where any loss of majority attributable to ULPs of E who cannot reap benefits from such conduct)

Westwood Import Company, Inc. **251 NLRB No. 162**
(purchaser of business held successor and obligated to bargain with U representing Ees of seller where it engaged in same business at same facility and sold to substantially same customers as seller and employed all of supervisory and nonsupervisory Ees in their same job classifications; further, purchaser may not justify its failure to bargain on basis of or basis of good faith doubt of Us majority where it acquired business with full knowledge of seller's unlawful refusal to bargain)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(E's withdrawal of recognition assertedly because of its doubt as to U's majority status, violative, since U's loss of majority was at least partly attributable to E's refusing to promote and hire U supporters into bargaining unit and engaging in other conduct designed to convey a coercive message to a U member)

4080-5051 Unlawful recognition of and relationship with union

Argano Electric Corp. **248 NLRB No. 049**
(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held *violative* of *Sections 8(a)(2), (3), (5) and (1) of Act*)

4080-5066 Change in unit composition

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**
(E had insufficient evidence to overcome presumption of continuing majority support where withdrawal of recognition based on decline in U dues check-off authorization in right-to-work state, high Ee turnover and U's seeming willingness to agree to almost any E contract proposal and fact that E acted in good faith is necessary but not sufficient element to justify withdrawal)

4080-5066-2500 Economic turnover

International Medication Systems, Ltd. **253 NLRB No. 120**

Kenyon Printing and Office Supply, Inc. **252 NLRB No. 154**
(Ee turnover held not proof that U no longer represented majority since new Ees are presumed to support U in same ratio as those they replaced)

Pennco, Inc. **250 NLRB No. 093**
(fact only 42 striking Ees out of unit of 173 sought reinstatement at conclusion of strike not basis for good faith doubt of majority where E had withdrawn recognition from U 10 months prior to start of strike)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**
(where U certified for company-wide unit of P&M Ees employed in predecessor's 7 plants and new E purchases one of these plants, latter E held not successor and its refusal to bargain with certified U not violative, where certification over 2 years old; only 8 of 49 presently employed revealed themselves to be U adherents, 13 had worked for predecessor but did not participate in strike and rest hired by predecessor after strike or new E; no ULPs or U animus by new E, all of which gave rise to good faith doubt of majority status in changed bargaining unit)

4080-5066-3000 Retirement

Kuno Steel Products Corp. etc. **252 NLRB No. 127**
(retirement of striking Ees not indication that U no longer represented majority since their replacements are presumed to support ratio as those whom they replaced)

4080-5066-7500 Substantial increase in work force

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

4080-5072 Replacement of economic strikers

Pennco, Inc. **250 NLRB No. 093**
(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(withdrawal of recognition, after E had threatened striking Ees with statements that replacements would be hired and that these replacements' seniority would be superior to that of returning strikers, unlawful, where Ees felt continued concern about potential loss of employment)

4080-5078 Lapse of time since bargaining relationship established

4080-5078-7500 Remedial order

Kuno Steel Products Corp. etc. **252 NLRB No. 127**
(passage of time not justifiable cause for E's asserted doubt of U's majority status where passage of time was due to protracted litigation in which U actively participated, U engaged in at least occasional picketing and in meetings with Ees to keep them abreast of litigation)

4080-5084 Decertification movement

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**
(anti U ptn signed by 15 out of 26 Ees in unit not basis for doubt where supervisor had unlawfully solicited signatures)

C. Langenfelder & Sons, Inc. **JD-822-79**
(E's refusal to take any action regarding executing contract until qcr resolved justified by decertification ptn signed by majority of unit Ees, absent evidence E or its representatives assisted in obtaining signatures or unlawfully enmeshed itself in decertification movement)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(E who had engaged in decertification campaign held not entitled to benefit of rule that filing of decertification may be by itself, a valid excuse for not bargaining with incumbent representative (provided that U's loss of majority status is not attributable to E's ULPs) but must also show some objective evidence of loss of majority status)

4080-5088 Loss of election

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(U remains Ees bargaining representative until results of decertification election are certified)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(unilateral granting of raises and changes of Ee status done while validity of decertification election in doubt, violative)

4080-5093 Filing of petition for election by employer

Schmutz Foundry and Machine Company **251 NLRB No. 197**
(not valid basis for doubt)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**

4090 TERMINATION OF OBLIGATION BY EMPLOYER BY CHANGED CIRCUMSTANCES

4090-3000 Affiliation with an international union

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**
(E's refusal to bargain with permanent international affiliate of U after two years' recognition as temporary affiliate, unlawful; no qcr arose where affiliation did not effect substantial changes in representation, and separate vote for affiliation was not required because of continuity of representation)

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**
(when collective bargaining representative affiliated with International U and E refused to bargain with U after this point, E violated Act where successor U is same bargaining entity as predecessor U, and since it had right to make its own policy determinations, negotiate contracts, call strikes, and retained right to establish and keep its own dues, local U is autonomous from International; vote in favor of affiliation was unanimous, conformed to U constitution; moreover, fact that vote was not secret or separate vote by unit Ees not held does not negate validity as Us are not held to Bd's own election standards)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequent withdrawal of recognition from Teamsters local, violative, since Teamsters local wascontinuation of Brewery Workers local)

4090-5000 Change in unit

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(E's contention that bargaining unit ceased and thus E's obligation to bargain ceased when last active Ee in unit ceased work, rejected, since in unit involving normal fluctuating demand for Ees, work force was deemed to consist of Ees on layoff with reasonable expectancy of further employment as well as Ees actively working, and therefore unit continued to exist and

4090-5000—Cont.

with it E's obligation to bargain; before contract expired, E continued to seek work of type normally performed by unit Ees and, after contract expired, obtained such work and employed Ees to perform it)

C.J.B. Industries **250 NLRB No. 184**
(successor E's purchase of 1 of 2 predecessor's plants did not remove successor's bargaining obligation)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(withdrawal of recognition of U as bargaining agent for Ees transferred from subsidiary to parent organization in same building, unlawful, as they still remained part of bargaining unit)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**
(where U certified for company-wide unit of P&M Ees employed in predecessor's 7 plants and new E purchases one of these plants, latter E held not successor and its refusal to bargain with certified U not violative, where certification over 2 years old; only 8 of 49 presently employed revealed themselves to be U adherents, 13 had worked for predecessor but did not participate in strike and rest hired by predecessor after strike or new E; no ULPs or U animus by new E, all of which gave rise to good faith doubt of majority status in changed bargaining unit)

4090-7500 Relocation of plant or certain operations

Westwood Import Company, Inc. **251 NLRB No. 162**
(withdrawal of recognition and failure to honor contract at relocated plant 35 miles from old site during period contract served as bar and no qcr present, violative, otherwise, E could unilaterally eliminate or change representative at time when Bd would refuse to allow change; relocation, providing operations and equipment remain substantially same at new location and substantial percentage of Ees (though less than 50) at old plant transfer to new location, has little effect on bargaining obligation)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where E committs ULP by transferring only few Ees to relocated plant, Bd will then examine question of whether majority of unit Ees at new facility would have been comprised of Ees from old facility had it not been for E's unlawful activity)

Vitco Steel Supply Corp. **JD-103-80**
(refusal to recognize U at new location unlawful where new operation was substantial continuation of old operation with same Ees)

4800 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYER

4825 OBLIGATION TO RECOGNIZE AND BARGAIN

4825-3300 Alter ego of employer

G and M Lath and Plaster Co., Inc. and Its Aler Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(corporation and its alter ego's repudiation of contract and withdrawal of recognition of U, violative)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation, proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(E's *alter ego's* refusal to recognize and bargain with U for Ees doing unit work previously performed by E, held violative)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(refusal of E alter ego to recognize U with which preexisting E, had contract, unlawful)

4825-5000 Joint or single employer

Miami Foundry Corporation **252 NLRB No. 002**
(single integrated enterprise resulting from corporation's acquisition of iron foundry's stock held liable for new owner's refusal to recognize and meet with U representing foundry)

The Pulitzer Publishing Company v. N.L.R.B. **618 F.2d 1275 (C.A. 8, 1980)**
(newspaper publisher had no duty to bargain with U concerning Ees of delivery company providing services to publisher, in view of finding that publisher was not joint E with delivery company)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

4825-6700 Successor employer

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(successor E's refusal to recognize and bargain with U, violative)

Stroehmann Brothers Company **252 NLRB No. 139**
(refusal of new owner of bake goods distributorship to recognize and bargain with U that historically represented unit of shipping Ees of former E, violative)

Zylan Pontiac **252 NLRB No. 037**

Cablevision Systems Development Company, A Partnership **251 NLRB NO. 176**
(violation where cable TV company had entered into negotiations with U representing cable company's subcontractor, and upon becoming subcontractor's successor, as found herein, it withdrew recognition and refused to bargain with U)

Westwood Import Company, Inc. **251 NLRB No. 162**
(purchaser of business held successor and obligated to bargain with U representing Ees of seller where it engaged in same business at same facility and sold to substantially same customers as seller and employed all of supervisory and nonsupervisory Ees in their same job classifications; further, purchaser may not justify its failure to bargain on basis of or basis of good faith doubt of Us majority where it acquired business with full knowledge of seller's unlawful refusal to bargain)

C.J.B. Industries **250 NLRB No. 184**
(successor's avoidance of its obligation to recognize and bargain with its predecessor's U by not hiring predecessor's former Ees who were U members, unlawful)

C.J.B. Industries **250 NLRB No. 184**
(contention that evidence of unlawful motive in hiring should not have been considered with respect to 8(a)(5) claim because no allegation or finding that E violated 8(a)(3) was made held w/o merit, since claim was based upon alleged successorship obligation, and element of continuity or work force between predecessor and successor is critical; GC must show either that E hired or retained requisite complement of former Ees *or* that it decided not to hire former Ees because of their U affiliation)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**
(E held successor and obligated to recognize and bargain with U representing Ees of predecessor where after purshase it continued same operation at same location using essentially same equipment and providing same services to substantially same individuals)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(clothing store held successor to clothing store with which it had previously shared building and to which it had subcontracted alterations, and obligated to bargain, when it moved to separate building, established own alterations department and hired 16 of 18 individuals who had performed its alterations as subcontractor's Ees of other clothing store since no hiatus; notwithstandind contention no successorship since Ees from former unit did not constitute majority of members of appropriate storewide unit at new store, as no presumption storewide unit appropriate and alteration Ees' history of separate bargaining)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(fitters not counted for purpose of determining if E which was alleged successor had hired majority of Ees in alterations unit at alleged predecessor E since fitters had been historically excluded from alterations unit at alleged predecessor)

Barclay Hospital, Inc. **247 NLRB No. 144**
(successor E held to have unlawfully refused to bargain with U representing predecessor's Ees, notwithstanting contention that successor had no duty under law to bargain with certified U and that U did not represent Ees then on payroll)

Hospital San Miguel, Inc. **JD-287-80**
(where transfer of stock and sale of assets with lease back to E occurried, and hospital's name unchanged, same equipment used, Ees remained same, supervisory staff unchanged, corporate charter unchanged, refusal to bargain with U violative either because Respondent, a corporate entity remained same employing entity, or because E held successor)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**
(E's refusal to bargain with U violative, since E which had purchased another company's assets was obligated to bargain with such U which represented seller's P&M Ees; E's obligation occurred as soon as it was perfectly clear that it intended to accept seller's Ees as its own)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**

4825-6700—Cont.

(E held successor and obligated to recognize and bargain with U where immediately after takeover all Ees in unit were Ees of predecessor E, and notwithstanding flucuation in size of unit during following 77 days, Ees of predecessor constituted majority of unit)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(Bd certification not necessary to trigger obligation to bargain of successor E)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(successor E's unilateral changes in wages, unlawful, where majority of Ees in unit were Ees of predecessor E and E had duty to bargain with U before making any changes)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**
(where U certified for company-wide unit of P&M Ees employed in predecessor's 7 plants and new E purchases one of these plants, latter E held not successor and its refusal to bargain with certified U not violative, where certification over 2 years old; only 8 of 49 presently employed revealed themselves to be U adherents, 13 had worked for predecessor but did not participate in strike and rest hired by predecessor after strike or new E; no ULPs or U animus by new E, all of which gave rise to good faith doubt of majority status in changed bargaining unit)

4825-7500 Change in corporate structure

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation, proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

4850 OBLIGATION TO HONOR CONTRACT

4850-2500 Subsidiaries

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(withdrawal of recognition of U as bargaining agent for Ees transferred from subsidiary to parent organization in same building, unlawful, as they still remained part of bargaining unit)

4850-3300 Alter ego of employer

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(violation by refusal of alter ego-E to give effect to contract, of its preexisting corporation)

4850-6700 Successor employer

Westwood Import Company, Inc. **251 NLRB No. 162**
(while successor E is ordinarily free to set initial terms on which it will hire Ees of predecessor, where successor E did not mention changes in conditions of employment in interviews with Ees of predecessor, unilateral changes instituted after hiring Ees cannot be considered as initial conditions of employment under *Burns* and thus violative)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to honor predecessor's contract with U, unlawful where successor agreed to bind itself to predecessor's contract)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**
(violation, where successor E, who had hired majority of unit Ees of predecessor, unilaterally changed conditions of employment in contract between U and predecessor E, since at time of hiring it did not indicate any intent to change conditions; E's contention it did not employ full Ee complement at time commenced operations rejected, in view of fact complement did not increase)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

Barclay Hospital, Inc. **247 NLRB No. 144**
(although not dealing with all implications of E's argument that it has right not to be successor, Bd noted that *successorship* is a labor relations conclusion derived from economic facts and that a *right* not to become a successor would suggest a right to make employment decisions based on representational rights clearly proscribed by U.S. Sp.Ct. decision)

4850-7500 Joint or single employer

Hageman Underground Construction; etc. **253 NLRB No. 007**
(non-U company found herein single E with company that executed 8(f) agreement held bound by agreement at all existing and future jobsites, where U at one time represented majority of Ees who constituted a permanent and stable group of backhoe operators and E did not generally hire on project-by-project basis; this established irrebutable presumption of majority status during length of contract and whether U enjoyed such status at time E repudiated contract irrelevant)

Miami Foundry Corporation **252 NLRB No. 002**
(single integrated enterprise resulting from corporation's acquisition of stock of iron foundry held liable for new owner's termination of contract between iron foundry and U)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

U.S. Pipe & Foundry Company and Winfrey Enterprises, Inc. **247 NLRB No. 012**
(no violation where one joint E by previously giving notice to U of cancellation of contract which affected employment of Ees fulfilled duty of other joint E to notify U of same)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

5400 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYEE REPRESENTATIVE

St. Vincent Hospital v. N.L.R.B. **621 F.2d 1054 (C.A. 10, 1980)**
(enforcement granted since E violated Act by failing to recognize and bargain with new U affiliate that was voted in by unit Ees and certified by amendment; continuity of bargaining representative was preserved after affiliation where new U was not substantially different)

5700 MULTIEMPLOYER BARGAINING (SEE ALSO 440-5000)

5701 GENERALLY

Schaetzel Trucking, Inc. **250 NLRB No. 044**
(mere adoption of multi-E contract, not sufficient to make an E part of multi-E unit, absent showing that E indicated unequivocal intention to pursue group course of action with regard to labor relations)

5714 INTENT OF EMPLOYERS

Michael J. Bollinger Co. **252 NLRB No. 067**
(refusal of member of multi-E association to sign agreement reached by association, violative, notwithstanding letters of withdrawal sent to U, where member continued to participate in negotiations and manifested intention to be bound by group)

Schaetzel Trucking, Inc. **250 NLRB No. 044**
(E not part of multi-E unit, notwithstanding that E adopted, with modifications, result of negotiations between U and representatives of E members of the unit, where neither E nor E's only representative participated in those negotiations, E gave notice of its intention to pursue separate course of bargaining well in advance of beginning of negotiations, and E's subsequent actions were consistent with its expressed intention to bargain individually)

Binswanger Glass Company, Division of National Gypsum Company **JD-462-80**

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's refusing to negotiate with E on individual basis, violative, notwithstanding U's claim that it believed E had designated E association as bargaining representative; E had plainly stated its intention to bargain separately with U and not to join association)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**
(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding asserted good faith doubt of majority U status, where E did not notify U of

5714—Cont.

intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no contract with U by implication absent E's application for multi-E association membership, payment of initiation fee, authorization for association to bargain on E's behalf or individual short-form agreement with U)

5742 AUTHORITY OF ASSOCIATION

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E-association informed U that additional contractors had became members, including E, U justified in concluding that E-association had full authority to bargain for this E notwithstanding these additional contractors reserved right to reject contract as this limitation on association's right to negotiate for them was not communicated to U; this apparent authority is sufficient to bind E to agreement reached by E-association absent timely withdrawal)

5770 WITHDRAWAL FROM MULTIEMPLOYER BARGAINING

5770-0100 Generally

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E-association informed U that additional contractors had became members, including E, U justified in concluding that E-association had full authority to bargain for this E notwithstanding these additional contractors reserved right to reject contract as this limitation on association's right to negotiate for them was not communicated to U; this apparent authority is sufficient to bind E to agreement reached by E-association absent timely withdrawal)

5770-1200 Timely and unequivocal

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(E is free to withdraw from multi-E unit for any reason prior to date set for renegotiation of existing contract or date on which negotiations commence, provided adequate notice given U)

N.L.R.B. v. Joseph J. Callier, et al, d/b/a Callier's Custom Kitchens, a co-partnership **630 F.2d 595 (C.A. 8, 1980)**
(E's withdrawal from multi-E association ineffective because company failed to provide U with unequivocal notice of its withdrawal; moreover fact that U had constructive notice of E's withdrawal 10 weeks prior to signing of final agreement and did not formally protest, is not consent; thus, E's refusal to honor agreement violative)

5770-2500 Untimely

5770-2550 Where negotiations had begun

Teckwal Corp. **253 NLRB No. 022**
(where E member of multi-E bargaining unit sent notification of its withdrawal from the association weeks after new contract negotiations began, and E's attempted withdrawal lacked mutual assent or other cognizable justification, E's later refusal to execute and implement subsequently negotiated multi-E agreement, held violative)

Michael J. Bollinger Co. **252 NLRB No. 067**
(refusal of member of multi-E association to sign agreement reached by association, violative, notwithstanding letters of withdrawal sent to U, where member continued to participate in negotiations and manifested intention to be bound by group)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, hled untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

Harding Glass Industries **248 NLRB No. 091**
(withdrawal by E of one of its facilities from multi-E bargaining violative even if impasse)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative, since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
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N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
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H & D, Inc. v. N.L.R.B. **633 F.2d 139 (C.A. 9, 1980)**
(E's withdrawal from multi-E bargaining unit w/o consent of U after bargaining had begun not violative, where there was negotiating impasse at time of withdrawal)

5770-2583 Absent unusual circumstances

L.B. Priester & Son, Inc. **252 NLRB No. 034**
(poor business year in which E's losses were approximately $45,000 does not justify untimely withdrawal)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(impasse not unusual circumstance justifying untimely withdrawal from multi-E bargaining association, especially where E's desire to withdraw from association is not motivated by an alleged impasse)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, hled untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative, since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(unusual circumstances consist of either extreme financial pressures or where bargaining unit has been substantially fragmented)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(Bd decision that impasse alone does not justify E's unilateral withdrawal from multi-E bargaining association subject to only limited review where Congress intended to leave to Bd's *specialized judgment... questions concerning multi-E bargaining* and here Bd has struck reasonable balance)

N.L.R.B. v. Joseph J. Callier, et al, d/b/a Callier's Custom Kitchens, a co-partnership **630 F.2d 595 (C.A. 8, 1980)**
(limited to either E suffering extreme financial hardship or association becoming so fragmented that it ceases to be viable bargaining entity)

N.L.R.B. v. Carpenters' District Council of Greater St. Louis, AFL-CIO **622 F.2d 381 (C.A. 8, 1980)**
(E's refusal to abide by contract negotiated by multi-E association unlawful where E had untimely attempted to withdraw during negotiations upon association's request for its resignation because E's Ee had filed decertification ptn; neither filing of decertificaiton ptn, which was found not to constitute *unusual circumstance*, nor E's and association's mutual mistake of law in believing that E should resign because of ptn was held to justify E's untimely withdrawal w/o U's consent)

5770-3100 Unusual circumstances permitting untimely withdrawal

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(impasse not unusual circumstance justifying untimely withdrawal from multi-E bargaining association, especially where E's desire to withdraw from association is not motivated by an alleged impasse)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, hled untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract

5770-3100—Cont.

with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

Harding Glass Industries **248 NLRB No. 091**
(impasse not unusual circumstance)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(Bd decision that impasse alone does not justify E's unilateral withdrawal from multi-E bargaining association subject to only limited review where Congress intended to leave to Bd's *specialized judgment... questions concerning multi-E bargaining* and here Bd has struck reasonable balance)

5770-3700 Consent to untimely withdrawal

5770-3733 Consent of union

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative, since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(consent of U not found where: U did not explicitly object to E's announced withdrawal, continued to negotiate with E-association representatives and 3) did not formally protest attempted withdrawal until 2 weeks after unit-wide agreement reached, as U under no duty to protest in formal manner, consent involves affirmative action *antithetical* to claim of no withdrawal)

N.L.R.B. v. Joseph J. Callier, et al, d/b/a Callier's Custom Kitchens, a co-partnership **630 F.2d 595 (C.A. 8, 1980)**
(E's withdrawal from multi-E association ineffective because company failed to provide U with unequivocal notice of its withdrawal; moreover fact that U had constructive notice of E's withdrawal 10 weeks prior to signing of final agreement and did not formally protest, is not consent; thus, E's refusal to honor agreement violative)

N.L.R.B. v. Carpenters' District Council of Greater St. Louis, AFL-CIO **622 F.2d 381 (C.A. 8, 1980)**
(E's refusal to abide by contract negotiated by multi-E association unlawful where E had untimely attempted to withdraw during negotiations upon association's request for its resignation because E's Ee had filed decertification ptn; neither filing of decertificaiton ptn, which was found not to constitute *unusual circumstance,* nor E's and association's mutual mistake of law in believing that E should resign because of ptn was held to justify E's untimely withdrawal w/o U's consent)

H & D, Inc. v. N.L.R.B. **633 F.2d 139 (C.A. 9, 1980)**
(E's withdrawal from multi-E bargaining unit w/o consent of U after bargaining had begun not violative, where there was negotiating impasse at time of withdrawal)

5770-3784 Mutual consent of Union and Employer Association

Teckwal Corp. **253 NLRB No. 022**
(where E member of multi-E bargaining unit sent notification of its withdrawal from the association weeks after new contract negotiations began, and E's attempted withdrawal lacked mutual assent or other cognizable justification, E's later refusal to execute and implement subsequently negotiated multi-E agreement, held violative)

5770-5000 Interim agreements

N.L.R.B. v. Inland Cities, Inc. **618 F.2d 117(T) (C.A. 9, 1980)**
(E who signed interim agreement which bound him to outcome of negotiations by E-association violated Act when it refused to comply with contract; repudiation is not excused because E was motivated by economic necessity)

5791 INDIVIDUAL BARGAINING WITH UNION DURING MULTIEMPLOYER NEGOTIATIONS

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, filed untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

5800 MULTIUNION BARGAINING

6000 NATURE AND EXTENT OF OBLIGATION AND DUTY TO BARGAIN

6001 GENERALLY

6001-2500 Effect of 8(f) prehire agreement

Hageman Underground Construction; etc. **253 NLRB No. 007**
(non-U company found herein single E with company that executed 8(f) agreement held bound by agreement at all existing and future jobsites, where U at one time represented majority of Ees who constituted a permanent and stable group of backhoe operators and E did not generally hire on project-by-project basis; this established irrebutable presumption of majority status during length of contract and whether U enjoyed such status at time E repudiated contract irrelevant)

6001-5000 Scope of section 8(d)

6001-5017 Obligation to meet with object of reaching understanding on wages, hours, and other terms and conditons of employment

6001-5017-5000 Obligation during contract hiatus

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(refusal to meet with U after expiration of U's bargaining agreement concerning grievance filed on behalf of unit Ee, violative, since E's continuing past contract obligation includes duty to meet with bargaining representative and discuss unit Ees' grievances)

6001-5025 Continuation of existing terms and conditions pending bargaining

Aeronca, Inc. **253 NLRB No. 026**
(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

Inta-Roto, Inc. **252 NLRB No. 111**
(E's insistence on bargaining over items which were non-negotiable as result of limitation in contract reopener clause to negotiations solely concerning wages, violative)

Vienna Sausage Manufacturing Company **252 NLRB No. 183**
(where contract contains reopener provision and also automatic renewal clause effective unless contractually terminated or parties agree to modifications during period of reopening, contract remains in effect after expiration date)

Island Typographers, Inc. **252 NLRB No. 003**
(E bound by unsigned collective bargaining agreement where it complied with all its terms for 1st year of contract term and gave U no reason to believe it repudiated contract terms already agreed upon)

Newspaper Printing Corporation **250 NLRB No. 132**
(unilateral removal of advertisement typesetting work from *composing room* to *job shop,* violative, since this work was customarily performed by *composing room* Ees)

6001-5050 Act does not regulate substantial terms of employment

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(E's proposal of open shop not violative where terms of prior settlement agreement did not oblige E to agree to U shop and Act imposes no obligation upon E to agree to any specific term of employment)

6001-5083 Duty to bargain as to matters not covered by agreement

Aeronca, Inc. **253 NLRB No. 026**
(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

6025 INVESTIGATORY INTERVIEW FOR DISCIPLINARY PURPOSES

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(*Weingarten* protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

6025-5000 Denial of union representation

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

6033 MECHANICS OF BARGAINING

6033-1400 **Time and place of meeting**

6033-1458 Employer representative must be available with reasonable frequency

Eastern Maine Medical Center **253 NLRB No. 024**

(E held to have engaged in deliberate effort to stretch out negotiations with U so as to delay effective start of negotiations and to infect entire bargaining process, where E's chief negotiator refused to consent to U's request to meet frequently because of his busy schedule, took position that he could not meet for longer hours or have more meetings unless he determined that satisfactory progress was being made, and unilaterally concelled specifically dated meeting on short order)

6033-2800 **Authority of representative**

6033-2850 Must have sufficient authority and knowledge to negotiate effectively

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

(violation where all E's representatives made clear to U that they did not have authority to consummate agreement w/o approval of E's president, and E's president did not agree to terms and conditions which had been ostensibly negotiated by E's negotiator with U)

6033-4200 **Composition of bargaining committee**

6033-4240 Employer may not refuse to meet with designated representative absent special circumstances

Merillat Industries, Inc. **252 NLRB No. 114**

(E's refusal to allow U president to attend grievance meeting to act as advisor, not unlawful where contract was silent as to any right of U president to attend such meetings and absence of such practice in past represents closest approximation of evidence of how E and U would have decided issue in contract negotiations)

Fitzsimons Manufacturing Company, West Branch Tube Division **251 NLRB No. 053**

(E's refusal to meet and bargain with designated representative for purpose of resolving grievances, not unlawful, where representative physically assaulted E's personnel director during earlier bargaining session in presence of Ee bargaining committee and management officials, and thus justified such refusal since *presence of (this) particular individual would create ill will and make good-faith bargaining impossible;* furthermore, E had met and bargained with other U representatives in interim)

6033-4280 Presence of persons other than conferees at bargaining session

6033-4280-1300 **Stenographers or court reporters**

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**

(it would be contrary to policy of Act, which mandates negotiation over substantive provisions of E-Ee relationship, to permit negotiations to break down over presence of ct reporter at negotiating session, since issue did not involve *wages, hours and other terms and conditions of employment; issue was one of preliminary procedure*)

6033-5600 **Counterproposals**

6033-5650 Obligation to make after proposals

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

6033-6000 **Withdrawal of agreed-upon contract proposals**

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**

(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

Times-Herald, Inc. **249 NLRB No. 004**

(E's withdrawal of proposals, not unlawful, where U engaged in economic strike causing E to hire permanent replacements and no evidence to show action taken to prevent agreement)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**

(E's change in position regarding wages, pensions and termination date of already agreed upon in contract, unlawful)

6033-7000 **Impasse**

6033-7001 Generally

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**

(no *Borg Warner* ULP (see *N.L.R.B. v. Wooster Div. of Borg Warner Corp.*, 356 U.S. at 349) notwithstanding continued disagreement over nonmandatory subject since impasse over mandatory subject would have occurred even absent insistence on nonmandatory proposals)

Newspaper Printing Corporation v. N.L.R.B. **625 F.2d 956 (C.A. 10, 1980)**

(E's insistence to impasse on jurisdictional unit clause which modified unit description so as to give E unilateral control over unit scope unlawful in view of unlawfulness of both insistence on modification of unit scope and insistance to impasse on non-mandatory subject of bargaining; moreover, clause allowing E to change unit composition at will by unilaterally transferring work out of unit would deprive unit Ees of collective representation and bargaining over reduction or elimination of their jobs by work transfers or automation)

6033-7001-5000 **No obligation to continue negotiations after impasse**

International Medication Systems, Ltd. **253 NLRB No. 120**

(although *impasse* may suspend bargaining for time, it *does not relieve an E from the continuous duty to take no action---which amounts to a withdrawal of recognition of the U's representative status*)

Patrick & Company **248 NLRB No. 061**

(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

6033-7008 What constitutes

Inta-Roto, Inc. **252 NLRB No. 111**

(no impasse where neither party has exhausted bargaining possibilities nor reached stage where further meetings would have been fruitless)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

(no impasse justifying E's unilateral actions where bargaining stalemated by E's violative course of bargaining)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**

(no impasse existed, contrary to respondent's contention, notwithstanding facts that contract had expired, lockout had occurred, parties were far apart on many major issues and no new meeting date was set up at close of bargaining session, where bargaining had been conducted continuously, multi-E bargaining associations had not as yet considered significance and effect of Ees' unanimous rejection of their last offer, and associations knew that offer they made on date respondent contended impasse had occurred was not their final offer and would make further offers until U changed its position)

Excavation-Construction, Inc. **248 NLRB No. 081**

National Steel Service Center, Inc. **JD-395-80**

(E's insisting on charge in scope of unit as condition of signing new bargaining agreement and U unequivocally rejecting proposal and maintaining that position, notwithstanding side bar conversations at which U representative stated he was not personally opposed to unit charge)

H. H Fredericksen Co. **JD-(SF)-64-80**

(existence of bargaining impasse was evidenced, among other considerations, by fact that E's conduct, considerd in totality, was not in bad faith; limited number of bargaining sessions did not necessarily warrant finding that deadlock could not have happened since parties had fair and adequate opportunity to reach agreement; E and U recognized that situation was akin to a hiatus and that agreement was unlikely; and U's slightly modified proposals did not reflect concessions significant enough to break deadlock)

H & D, Inc. v. N.L.R.B. **633 F.2d 139 (C.A. 9, 1980)**

(situation where the negotiating members could well conclude that *there was no realistic prospect that continuation of discussion at that time would have been fruitful*)

H & D, Inc. v. N.L.R.B. **633 F.2d 139 (C.A. 9, 1980)**

(where E unilaterally withdrew from multi-E bargaining group after three months and seven sessions of bargaining followed by U membership's rejecting three E proposal and voting for strike, ct held impasse existed at time of E's withdrawal)

6033-7014 Agreement need not be reached

Deister Concentrator Company, Inc. **253 NLRB No. 040**

(lack of agreement does not require conclusion that no impasse existed)

6033-7028 Concessions indicate lack of impasse

Inta-Roto, Inc. **252 NLRB No. 111**

(where U rejected E's last offer and struck E, and E then acquiesced to U's request for further bargaining, E waived any claim that impasse might have been created by U's actions)

Times-Herald, Inc. **249 NLRB No. 004**

(E did not insist to impasse that U agree on modification of unit-jurisdiction clause of contract, where E changed its position and offered to agree to language from prior contract)

6033-7056 No impasse

Sea Bay Manor Home For Adults **253 NLRB No. 068**

6033-7056—Cont.

(no impasse existed where parties had signed stipulation agreement setting forth method for resolving their differences; E's refusal to abide by agreement and unilateral change of wage rates of Ees violative)

Inta-Roto, Inc. **252 NLRB No. 111**
(work stoppage is not alone proof of impasse)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(no impasse justifying E's unilateral actions where bargaining stalemated by E's violative course of bargaining)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that impasse did not exist and that E's conduct in treating U's rejection of its *final offer* as revocation of U's earlier unconditional offer to return to work was w/o merit, where E seized upon Ees' strike as a means of obtaining favorable contract, and its continued bargaining while operating at lower cost by use of temporary replacements unfairly strengthened E's bargaining position; no meaningful bargaining over wages was possible so long as E used reinstatement of strikers as bargaining bait to force acceptance of its terms)

Pease Company **251 NLRB No. 080**
(E's claim that impasse existed, rejected, where breakdown in negotiations was caused by E's bad faith bargaining which precludes finding of impasse)

6033-7056-3300 Intentional refusal to bargain

Harding Glass Industries **248 NLRB No. 091**
(withdrawal by E of one of its facilities from multi-E bargaining violative even if impasse)

6033-7056-6700 Proposal as to which party is willing to bargain

Patrick & Company **248 NLRB No. 061**
(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

6033-7056-8400 Existence of possibility of agreement

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(no impasse existed, contrary to respondent's contention, notwithstanding facts that contract had expired, lockout had occurred, parties were far apart on many major issues and no new meeting date was set up at close of bargaining session, where bargaining had been conducted continuously, multi-E bargaining associations had not as yet considered significance and effect of Ees' unanimous rejection of their last offer, and associations knew that offer they made on date respondent contended impasse had occurred was not their final offer and would make further offers until U changed its position)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, filed untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful, prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

6033-7070 Resumption of bargaining required

6033-7070-5000 Changed circumstances

Vitco Steel Supply Corp. **JD-103-80**
(E held to have unlawfully refused to bargain, notwithstanding parties had reached impasse, since circumstances changed after impasse when E not only withdrew its proposals in response to U's filing charges with Bd but also refused to meet with U thereafter)

6033-7084 Unilateral action may be justified by impasse

International Medication Systems, Ltd. **253 NLRB No. 120**
(although *impasse* may suspend bargaining for time, it *does not relieve an E from the continuous duty to take no action---which amounts to a withdrawal of recognition of the U's representative status*)

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(defense of *waiver* not available to E where E granted unit Ees merit wage increases, percentage wage increases, and extra paid holiday w/o giving U sufficient opportunity to bargain over those unilateral changes which it wanted to do, E and U had made no attempt to bargain on any economic issue during initial negotiations, hence neither party could contend that impasse had been reached justifying unilateral action)

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(E cannot take advantage of *impasse* when it was caused in large part by E's own unlawful conduct in unilaterally granting wage increases and benefits during contract negotiations)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(no impasse justifying E's unilateral actions where bargaining stalemated by E's violative course of bargaining)

Newspaper Printing Corporation **250 NLRB No. 132**
(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

6033-8400 Failure to sign or reduce agreement to writing

Consolidation Coal Company **253 NLRB No. 104**
(where parties had reached final unconditional agreement as to new absenteeism policy, E's refusal to execute written agreement violative)

Jefferson Stores, Inc. **253 NLRB No. 048**
(refusal to sign 1978-82 master agreement held not violative where agent who signed memorandum agreement of 1976-79 contract expressly limited contract to one jobsite and, therefore, did not become signatory to master contract and no obligation to sign new agreement; E's compliance with master agreement at additional jobsites does not establish adoption or ratification of agreement for those jobsites)

Teckwal Corp. **253 NLRB No. 022**
(where E member of multi-E bargaining unit sent notification of its withdrawal from the association weeks after new contract negotiations began, and E's attempted withdrawal lacked mutual assent or other cognizable justification, E's later refusal to execute and implement subsequently negotiated multi-E agreement, held violative)

Western Truck Services, Inc. **252 NLRB No. 096**
(refusal to sign agreed upon collective-bargaining contract, violative)

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

Kennebec Beverage Co., Inc. **248 NLRB No. 176**
(E's failure to sign bargaining agreement previously agreed upon, violative, notwithstanding document prepared by U and forwarded to E did not contain provision for payment of helpers to which parties had agreed, where E insisted it would not execute document until it attorney approved, and since that time had neither informed U that document varied from agreement reached nor attempted to assist in reducing such agreement to writing; mere fact that addition to document was required did not relieve E of obligation to execute agreed-upon contract)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to execute contract where it had agreed to adopt and sign predecessor's contract, unlawful)

Sidney M. Baer t/a Ashbourne Apartments **248 NLRB No. 088**
(E's refusing to incorporate certain terms in written document, not violative in view of insufficient evidence to support U's contention that E's sole negotiator communicated to U representative that agreement on those terms had been reached)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(E's refusal to execute proposed contract not violative since, although U and E had orally agreed upon many of terms to be included in the proposed contract, at no time had all of substantive terms been agreed upon)

Tasman Sea, Inc. **247 NLRB No. 007**
(successor E's failure to execute bargaining agreement, unlawful, where it had contract in its possession several months, was aware of specific provisions, and willingly accepted contract w/o modification upon receiving letter from U contract would not be effective until 6 months after close of escrow)

6033-8400—Cont.

Andersen Sand & Gravel Company **JD-655-80**
(E had no obligation to sign contract since U and E had no meeting of minds regarding grievance and arbitration clause where name and composition of dispute resolving committee in contract submitted to U for signature were not identical to what was agreed upon; however, when parties reach agreement on that provision, E will be obligated to sign)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Petricca Construction Company **JD-179-80**
(E's refusal to execute written contract as requested by U, not violative, notwithstanding that E had paid its unit Ees new increased wage rate and fringe benefits contained in the new contract, where there was no evidence that E ever agreed, either orally or in writing, that it would sign new contract or that it considered itself bound by it)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's refusal to sign contract, after reaching agreement with U unlawful, since it had reached agreement with U where it had read U's draft and indicated it was *all right*, notwithstanding contention incorporation by reference of area Standard Independent Agreement was substantial addition which E's counsel was entitled to study, where E was familiar with Standard Agreement and there had been negotiations as to modification of agreement)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from goup bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

Miscellaneous Drivers and Helpers Union, Local No. 610 v. N.L.R.B. **624 F.2d 831 (C.A. 8, 1980)**
(no violation where funeral home operator refused to sign funeral directors association's contract with U representing funeral vehicle drivers, since funeral home operator, though member of association, did not employ drivers but contracted with other Es for drivers' services notwithstanding he had signed contract in past)

N.L.R.B. v. General Brewing Company **628 F.2d 1357(T) (C.A. 9, 1980)**
(substantial evidence supported Bd's finding that E violated Act by refusing to execute bargaining agreement where complete agreement had been reached when memorandum of agreement was signed by the parties)

6033-8401 Generally

Island Typographers, Inc. **252 NLRB No. 003**
(letter from U to E which expressed its dissatisfaction with E over its *determination not to sign* collective bargaining agreement does not constitute legally valid demand for signature; therefore E did not refuse to sign such agreement)

Enidine, Inc. **251 NLRB No. 168**
(violative, especially where refusal occurred during certification year absent unusual circumstances)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

McKinzie Enterprises, Inc. d/b/a Cherokee United Super and Westpark United Super **250 NLRB No. 014**
(E's refusal to sign contract, not unlawful where there was no *meeting of the minds* about inclusion of certain contractual provisions and thus no contract)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(two inadvertent errors in written agreement submitted by U to E did not excuse E's complete refusal to execute agreement previously reached by U and E)

Carbon Specialties, Inc. **JD-510-80**
(failing to sign new contract bargained for and agreed upon, violative)

Somerville Hospital **JD-102-80**
(E's refusal to execute agreement, not unlawful, where parties had not reached agreement on salary provisions due to mutual mistake notwithstanding Ees had ratified agreement and new salary provisions had been implemented by E)

Shulman Air Freight, Inc. **JD-(SF)-39-80**
(E's refusal to sign contract containing terms which were agreed upon between E and certified U after exchange of letters, six negotiating meetings, and Ees' acceptance of E's final offer, violative)

N.L.R.B. v. Electra-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**

N.L.R.B. v. Electra-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**
(where U constitution prohibited it from entering into contract providing for open shop, this is no defense to E's refusal to execute contract containing such provision as internal U matters cannot releive E from its duty to execute agreed upon collective bargaining agreement)

6033-8450 Continuing request

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(E's rejection of U's request that E's last proposal, accepted by U, be reduced to writing, unlawful, notwithstanding fact that E had withdrawn proposal since proposal was withdrawn solely because of E's unlawful withdrawal of recognition and contract thus remained open)

National Steel Service Center, Inc. **JD-395-80**
(E obligated to sign bargaining agreement, notwithstanding impasse on change in scope of unit, since impasse on permissive bargaining subject had effect of removing from E freedom to agree to any but historical unit. U's call for meetings reasonably constituted request impassing statutory obligation to sign; further, E's continued insistence on separate units rendered explicit request to sign futile and terms agreed upon implemented which further show then was complete agreement on terms for renewal)

6033-9200 Ratification by Employees

International Medication Systems, Ltd. **253 NLRB No. 120**
(failure of U to present final offer of E to unit members can not be used as evidence of E's good faith doubt of majority status since any inference drawn for U's behavior is merely speculative)

Shulman Air Freight, Inc. **JD-(SF)-39-80**
(E's refusal to sign contract containing terms which were agreed upon between E and certified U after exchange of letters, six negotiating meetings, and Ees' acceptance of E's final offer, violative)

6033-9500 Approval by attorney

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(fact contract was to be submitted to attorneys for *cleaning up* did not allow party to later modify terms of agreed upon contract where attorney objected)

6033-9600 Repudiation of contract

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's change in position regarding wages, pensions and termination date of already agreed upon in contract, unlawful)

6050 SUBJECT MATTER OF BARGAINING

6050-0100 Generally

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct U.S. 1979)**

6050-0100—Cont.

(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impasse upon bargaining at a restaurant while aware of U's policy against discussing business at lunch and rejecting U's five proposals of alternative meeting places held to unlawful stifle negotiations at inception over threshold issue)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(Bd has special expertise in classifying *mandatory* and *non-mandatory* subjects of bargaining; Congress delegated primary responsibility of defining scope of duty to bargain to Bd)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

6050-0120 Mandatory subjects defined

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(in-plant food prices and services held mandatory subjects of bargaining where E retained right to review and approves food prices and services provided by third-party supplier and in view of industrial practice to include such contract provisions)

W. G. Best Homes Corporation **253 NLRB No. 123**
(subcontracting)

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(where parties to contract under negotiation voluntarily agreed in writing to resolve their differences over mandatory terms by submitting them to binding arbitration, this agreement becomes so intertwined with mandatory terms as to be inseparable and becomes mandatory itself; therefore E's repudiation of stipulation agreement violative, as it constitutes more than mere breach of contract)

Charmer Industries, Inc. **250 NLRB No. 031**
(notwithstanding contention that bill collection procedures are entrepreneurial credit policy decisions, ALJ held salesmens' collection of payments for merchandise sold and their responsibility for releasing orders for delivery were duties w/i term *working conditions* which are mandatory subjects of bargaining)

Tenneco Chemicals, Inc. **249 NLRB No. 171**
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(duty to bargain about wages, hours and other terms and conditions of employment includes duty to bargain about subcontracting out unit work)

Arizona Public Service Company **247 NLRB No. 054**
(subcontracting of unit work)

Lever Brothers Company **JD-301-80**
(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

Mission Childcare Consortium, Inc. **JD-(SF)-110-80**
(company provided meals)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(*mandatory* subjects (of bargaining) are limited to issues that settle aspect of relationship between E and Ees)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(contributions to health and welfare and pension funds, mandatory subject of bargaining)

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E's decision to alter its marketing structure from branch office responsibility to new marketing hierarchy not mandatory subject of bargaining, since decision involved sale of significant assets, fundamental changes in marketing structure and significant reallocation of capital notwithstanding changes may have profound effect on employment conditions)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6050-0140 Permissible subjects defined

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(interest arbitration clause, in itself, is nonmandatory subject of bargaining and bargaining to impasse over whether to include such clause in contract under negotiation would be violative)

National Steel Service Center, Inc. **JD-395-80**
(appropriate unit permissive subject of bargaining)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impasse upon bargaining at a restaurant while aware of U's policy against discussing business at lunch and rejecting U's five proposals of alternative meeting places held to unlawful stifle negotiations at inception over threshold issue)

The Leavenworth Times, A Division of Thomson Newspapers, Inc. **JD-(SF)-308-79**
(U's proposal to settle part of ULP charge against E w/i collective-bargaining agreement, held permissive and not mandatory)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(*interest arbitration* clause is *non-mandatory* subject of bargaining as it bears only remote or incidental relationship to terms or conditions of employment)

6050-0160 Prohibited subjects defined

Inta-Roto, Inc. **252 NLRB No. 111**
(E's insistence on bargaining over items which were non-negotiable as result of limitation in contract reopener clause to negotiations solely concerning wages, violative)

6050-0800 Scope and work of unit

6050-0825 Work preservation (see also 530-6067-4022)

6050-0825-3300 Economically motivated managerial decisions which have destructive effect on unit (See also 530-6067-4011 and 4022)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

6050-0850 Work functions

Newspaper Printing Corporation **250 NLRB No. 132**
(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

Newspaper Printing Corporation **250 NLRB No. 132**
(unilateral removal of advertisement typesetting work from *composing room* to *job shop*, violative, since this work was customarily performed by *composing room* Ees)

6050-0875 Compostion of unit

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

National Steel Service Center, Inc. **JD-395-80**
(appropriate unit not mandatory, subject of bargaining)

Newspaper Printing Corporation v. N.L.R.B. **625 F.2d 956 (C.A. 10, 1980)**
(E's insistence to impasse on jurisdictional unit clause which modified unit description so as to give E unilateral control over unit scope unlawful in view of unlawfulness of both insistence on modification of unit scope and insistance to impasse on non-mandatory subject of bargaining; moreover, clause allowing E to change unit composition at will by unilaterally transferring work out of unit would deprive unit Ees of collective representation and bargaining over reduction or elimination of their jobs by work transfers or automation)

6050-1600 Remuneration and benefits

6050-1601 Generally

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to negotiate over pay of group leaders who comprise part of bargaining unit)

6050-1612 Wages

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-1612-3700 Automatic wage increase

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

6050-1612-5000 Individual merit wage increases

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

6050-1612-5800 Indirect wages

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6050-1625 Bonuses

Aeronca, Inc. **253 NLRB No. 026**
(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

Woonsocket Spinning Company **252 NLRB No. 163**
(Christmas bonus held wages where paid on 17 consecutive years, same formula for determining bonus used for past 5 years and income tax and FICA withheld from bonus)

6050-1645 Savings plan

National Broadcasting Co., Inc. **252 NLRB No. 033**
(E's refusal to bargain over its saving plan being part of collective bargaining agreement, violative, as it is mandatory subject of bargaining; moreover, U did not waive its right to bargain over plan where E made brief reference to plan in response to U question and made clear to U that plan only available to non-U Ees notwithstanding U failed to press for savings plan at that time)

6050-1662 Pensions and group insurance

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-2500 Tenure and Seniority

6050-2528 Seniority

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-2575 Layoffs and/or terminations

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

6050-2579 Reinstatement rights of economic strikers

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(economic strikers entitled to reinstatement where U in informing E that its members would return to work adverted repeatedly to its insistence that E's offer had been accepted, pickets were removed and there was no evidence of further strike action)

6050-3300 Working conditions

6050-3340 Work schedules

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(additional Thanksgiving holiday)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held violative of Section 8(a)(5) of Act, since it was clearly unilateral change in terms or condition of employment previously fixed by E and made at time when E was obliged to deal with U notwithstanding initiation of and withdrawal of clean up time done w/o any knowledge of management other than their immediate low level supervisors)

6050-3370 Vending machines and cafeteria services

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(E's refusal to bargain about in-plant food prices and services, violative, since prices are condition of employment w/i meaning of Sec. 8(d) where E retained right to review and approve prices and services provided by third-party supplier)

6050-3395 Disciplinary system

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(E's counseling policy mandatory subject of bargaining where Ee's refusal to submit to it became part of his personnel file and could affect his job security)

6050-4100 Grievance and dispute resolving procedures

6050-4133 Grievances

6050-4133-1200 Arbitration as final step of grievance procedure

Independent Stave Company **248 NLRB No. 025**
(E's failure to comply with arbitrator selection clause of current agreement with U held violative; E's position, attempting to spread arbitration work equally among five chosen arbitrators, blocked the arbitration provision entirely, and was mid-term modification of agreement w/o consulting with U)

6050-4133-3700 Refusal to Process or Delay in Processing

Pease Company **251 NLRB No. 080**
(E's refusal to process Ees' grievances pursuant to its unilaterally and unlawfully instituted procedure amounted to unlawful unilateral implementation thereof, thereby frustrating any meaningful role of U in grievance processing and serving notice on Ees that U representation in such matters was futile)

6050-5000 Union-security and checkoff

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

N.L.R.B. v. Electra-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**
(where U constitution prohibited it from entering into contract providing for open shop, this is no defense to E's refusal to execute contract containing such provision as internal U matters cannot releive E from its duty to execute agreed upon collective bargaining agreement)

6050-5075 Checkoff

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to agree to checkoff provision in order to *protect* interests of *pro-company* Ees)

Independent Stave Company **248 NLRB No. 025**
(E's refusal to remit checked-off dues to U held violative, since E failed to comply with checkoff provision in current contract; provision in E's authorization ptn that check-off dues be placed in escrow rather than be paid over to U deprived U of dues which Ees were obligated to pay)

6050-5700 Interest arbitration clause

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(interest arbitration clause, in itself, is nonmandatory subject of bargaining and bargaining to impasse over whether to include such clause in contract under negotiation would be violative)

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(where parties to contract under negotiation voluntarily agreed in writing to resolve their differences over mandatory terms by submitting them to binding arbitration, this agreement becomes so intertwined with mandatory terms as to be inseparable and becomes mandatory itself; therefore E's repudiation of stipulation agreement violative, as it constitutes more than mere breach of contract)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(*interest arbitration* clause is *non-mandatory* subject of bargaining as it bears only remote or incidental relationship to terms or conditions of employment)

6050-5800 Management prerogatives

6050-5875 Management rights clause

Eastern Maine Medical Center **253 NLRB No. 024**

6050-5875—Cont.

(E's insistence on management rights clause as well as finality clause, as price for any agreement reached, exhibited desire to undermine U, avoid any meaningful final agreement, and unwillingness to bargain in good faith, where management rights clause spelled out management control over almost all aspects of employment relationship and permitted unilateral action on detailed set of working conditions; and in finality clause E sought waiver of U's bargaining rights during term of agreement over any subject matter not specifically referred to or covered in agreement)

Lever Brothers Company **JD-301-80**
(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

6050-5887 Finality clause

Eastern Maine Medical Center **253 NLRB No. 024**
(E's insistence on management rights clause as well as finality clause, as price for any agreement reached, exhibited desire to undermine U, avoid any meaningful final agreement, and unwillingness to bargain in good faith, where management rights clause spelled out management control over almost all aspects of employment relationship and permitted unilateral action on detailed set of working conditions; and in finality clause E sought waiver of U's bargaining rights during term of agreement over any subject matter not specifically referred to or covered in agreement)

6050-7000 Matters relating to nonunit employees

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6050-9100 Contract enforcement provisions

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

6067 ACTS CONSTITUTING REFUSAL TO BARGAIN OR INDICATING BAD FAITH

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(failure to bargain not unlawful where (1) there was no contract between E and U by implication, (2) parties were equally at fault in contributing to ambiguity of their arrangement, and (3) there was no basis for finding of equitable estoppel absent evidence of (a) U's inability to obtain information as to status of E's membership in multi-E association and (b) U's detrimental reliance on E's conduct suggesting such membership)

6067-0100 Generally

P. J. Gear & Sons, Inc. **252 NLRB No. 028**
(executing collective bargaining agreement with U while concealing existence of outstanding subcontract in derogation of agreement's provision against subcontracting)

United States Steel Corporation **248 NLRB No. 090**
(violation where E refused to bargain concerning wages and working conditions of students attending E-sponsored school on basis that they were no longer unit members where Bd found that they remained in unit as Ees while in school)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(evidence of prior *use* or *misuse* of information requested of E by U is quite relevant in determining whether E was bargaining in good faith)

6067-0150 Good faith is question of fact for Board to determine

6067-0150-3300 Can only be inferred from circumstantial evidence

Times-Herald, Inc. **249 NLRB No. 004**
(*off the record* statements may be considered)

6067-0150-8300 Union animus not prerequisite to finding of lack of good faith

Production Plated Plastics, Inc. **247 NLRB No. 076**
(in finding independent 8(a)(5) violation, Bd did not rely on part of Judge's decision that found U animus prerequisite for 8(a)(3) violation in circumstances constituting unilateral change)

6067-1000 Bargaining with objective of causing a work stoppage

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**

6067-2000 Actions taken to avoid reaching agreement

6067-2010 Response to bargaining request

W. G. Best Homes Corporation **253 NLRB No. 123**
(*burden of requesting bargaining about a change or proposed change in business operations shifts to U upon notification by E that such change is imminent; although conjecture and rumor are not adequate substitute for a formal notice, notice less than formal may be sufficient where more formal notice would have been futile in view of U's insistence on bargaining through association unit from which E had properly withdrawn and U is not interested in bargaining with E on individual basis*)

The Arundel Corporation **252 NLRB No. 059**
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had assertedly precipitously recognized another U, not unlawful, where there was no unlawful intent, no logical basis exists for assuming that matter was rigged so as to exclude charging U since only 2 or 3 of 15 Ees would have been represented by it, and there was no contention raised based on Midwest Piping doctrine or on recognition of contracting U before E had representative complement in its employ)

The Arundel Corporation **252 NLRB No. 059**
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had recognized another U held not unlawful, where Ees sought by U were located substantial distance from other Ees covered by charging U's contract, they had no contact with such Ees, were employed in work situation in which their supervisor had considerable control over day-to-day personnel policies and employment, and they never expressed preference to be recognized by charging U rather than recognized U)

Howard Johnson Company **250 NLRB No. 161**
(E's refusal to acknowledge U's admitted requests to bargain, unlawful, where E knew that U was certified representative, and yet it ignored U's letters requesting bargaining; if E were acting in good faith, it would have acknowledged U's letters and advised it of its reasons for refusing to bargain, and after indirectly receiving notice of Bd's denial of requests for review of RD's D/O, E had option of complying with RD's decision or questioning Bd as to validity of notice it had indirectly received, but it failed to do either)

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

B. N. Beard Company **248 NLRB No. 016**
(refusal to recognize Us, unlawful, where E refused to accede to requests for bargaining made by Us regarding new contracts)

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(E's refusal to bargain with certified U, unlawful where RD's overruling of E's objections to election again upheld on remand for hearing on such objections)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

6067-2020 Surface bargaining

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

Westvaco Corporation d/b/a Westvaco Gauley Woodyard **249 NLRB No. 012**
(violation found where pattern of negotiations consisted of E parrying U's substantive proposals with insignificant unrelated concessions and E failed to reach agreement on any substantive subjects of bargaining)

Carbonex Coal Company **248 NLRB No. 107**
(E's proposal of management rights clause requiring U to waive practically all its rights, refusing to negotiate U-security clause, refusing to negotiate over safety and health proposals constitute surface bargaining)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

Raines Lincoln-Mercury, Inc. **JD-224-80**

6067-2020—Cont.

Southside Electric Cooperative, Inc. **JD-800-79**

K Mart Corporation v. N.L.R.B. **626 F.2d 704 (C.A. 9, 1980)**
(offers of little or no wage increase, delay in presenting proposal and refusal to supply information to substantiate E's claim that it was unable to pay salary increase constitute bad faith bargaining)

6067-2025 Piecemeal bargaining

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

Patrick & Company **248 NLRB No. 061**
(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

6067-2030 Dilatory and evasive tactics

Cable Vision, Inc. **249 NLRB No. 062**

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(E violated Act by dilatory bargaining where it never made specific economic proposals until 5 months after negotiations commenced and competitors had signed their contracts)

6067-2030-0100 Generally

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(E's statement that it was only present at negotiations because law required it to be there)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unjustifiable, frequent, inordinately late arrival at bargaining sessions)

6067-2030-1200 Failure to reply, or delay in replying to request to bargain

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**

Industrial Uniform and Towel Service, Inc. **JD-(NY)-43-80**
(intentional delay of a month in negotiations, violative)

6067-2030-1700 Failure to designate bargaining representative

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

6067-2030-1900 Failure to delegate sufficient authority to bargaining representative

Tribal American Consulting Corporation **JD-(SF)-314-80**
(continuing to subcontract bus driver's work after end of strike, violative where U was not consulted, and E failed to bargain by sending representative who had no authority to bind E)

6067-2030-2500 Change in position

Pittsburgh--Des Moines Steel Co. **253 NLRB No. 086**
(E's withdrawal of its original proposals tentatively agreed upon by U during negotiations for new contract, and substituting, w/o explanation, regressive proposals to U concerning U security, checkoff, picket line and right to strike provisions held violative, since E's reasons for, and timing of, its actions bore no relation to restrictive changes proposed; E's overall course of conduct evidenced intent to frustrate bargaining)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(offering less favorable proposals than previously offered on *take it or leave it basis*)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(violation, where E, without explanation, reinstated previously withdrawn proposals)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's change in position regarding wages, pensions and termination date of already agreed upon in contract, unlawful)

6067-2030-5000 Behavior in negotiations

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(violation, where E had fixed intent not to reach agreement respecting U security and checkoff, demanded, in effect, as condition to contract, retention for itself right of unilateral modification of working conditions, and in addition, proposed management rights clause where E retained all rights not otherwise specifically covered by agreement, and refused to consider no discrimination provision)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

Patrick & Company **248 NLRB No. 061**
(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(E's deviation from past practice by refusing to rescind notice to U terminating existing contract on its expiration date, unlawful)

Raines Lincoln-Mercury, Inc. **JD-224-80**
(failure to present complete contract proposal when promised, unlawful)

6067-2030-5050 Away from bargaining table

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(refusal to bargain for 5-month period violative, since Bd rejected E's defenses of *crowded calendar* and unacceptability of individual negotiator who had assertedly, as striker, set fire to E's building, where most of E's business reasons in regard to crowded calendar were rectified and individual negotiator in contention was removed from committee before date of E's refusal to bargain)

6067-2030-6700 Failure to make agreed-upon changes to contract

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(failure to revise proposed management-rights clause in accordance with interpretation E gave U)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

6067-2030-7500 Failure to make or keep bargaining conference appointments

Eastern Maine Medical Center **253 NLRB No. 024**
(E held to have engaged in deliberate effort to stretch out negotiations with U so as to delay effective start of negotiations and to infect entire bargaining process, where E's chief negotiator refused to consent to U's request to meet frequently because of his busy schedule, took position that he could not meet for longer hours or have more meetings unless he determined that satisfactory progress was being made, and unilaterally concelled specifically dated meeting on short order)

Hillcrest Furniture Manufacturing Co., Inc. **253 NLRB No. 009**
(cancelling meeting scheduled with U)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unjustifiable, frequent, inordinately late arrival at bargaining sessions)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(E's refusal to meet or arrange for future bargaining sessions after voluntarily recognizing U and agreeing to meet constituted unlawful withdrawal of recognition and refusal to bargain)

Clyde W. Dent Carpet Installation, Inc. **JD-389-80**
(E held to have refused to bargain in good faith where E, on several occasions, failed to meet with U at previously scheduled times; from the outset of bargaining, E's negotiator expressly voiced his belief that bargaining was futile and E went through the motions of negotiations without any serious intent to adjust differences and reach acceptable common ground)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(E's failure to attend meeting arranged by F.M.C.S., not unlawful in view of wording of Section 203(c) that either party's failure to agree to procedure suggested by F.M.C.S. not to be deemed violation of duty imposed by the Act)

6067-2030-8100 Failure to 'meet at reasonable times'

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(refusal to bargain for 5-month period violative, since Bd rejected E's defenses of *crowded calendar* and unacceptability of individual negotiator who had assertedly, as striker, set fire to E's building, where most of E's business reasons in regard to crowded calendar were rectified and individual negotiator in contention was removed from committee before date of E's refusal to bargain)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to meet because supposedly at impasse and because of picket line misconduct shows evidence of E's bad faith)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

6067-2030-8100—Cont.

(violation where E stalled negotiations by stalling scheduling of bargaining sessions)

Cable Vision, Inc. **249 NLRB No. 062**

The Baughman Company **248 NLRB No. 186**
(failure to respond to telephone calls except for one return call and failure to meet with U, unlawful)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

Wellman Industries, Inc. **248 NLRB No. 029**

Circle X Corporation **JD-(SF)-222-80**
(refusing U's request to meet with full U negotiating committee which contained unit Ees at a reasonable hour to discuss contract, unlawful)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(long delay in commencement of bargaining for new agreement, unlawful where E had received U's proposals for new meeting and request for meeting but refused to meet until day before old agreement expired)

Raines Lincoln-Mercury, Inc. **JD-224-80**
(failure to meet at reasonable times for reasonable periods of duration, unlawful)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impasse upon bargaining at a restaurant while aware of U's policy against bargaining in restaurants and rejecting U's five reasonable alternatives held unlawful refusal to meet at reasonable times and places so as to delay and prevent bargaining)

Lucy's, Inc. **JD-832-79**
(E's delay in meeting with U for period of over 4 months, unlawful, notwithstanding U did not provide E with certain information concerning U's health and welfare fund, where U repeatedly attempted to persuade E to return to bargaining table during this period; U's failure to provide E with requested information did not relieve E from its obligation to meet with U at reasonable times)

6067-2030-8700 Bargaining by alternative

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(E's posting of bargaining minutes which occasionally mistated positions taken by U, made some reference to U's mbargaining representative being unprepared, and blamed U for keeping E's representatives waiting, not violative, where no threats contained in minutes and no demand or urging that U be repudiated)

6067-2040 Bypassing or otherwise undermining representative

Mather Federal Credit Union **JD-(SF)-8-80**
(bargaining with U while at same time attempting to destroy U's majority and undermine its representative status by using delay in coming to agreement and putting pressure upon Ees, unlawful)

6067-2040-2000 Bargaining with other groups of representatives

6067-2040-2033 Employer initiated

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

6067-2040-4000 Bargaining With Individuals or Offers Thereof

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(E's representative stating to Ees he could not understand why Ees would not prefer direct payment which they could use for IRA pension funds rather than be covered by U pension plan, not violative, since Ees offered nothing nor urged to do anything)

Ledford Construction Company, Inc. **251 NLRB No. 193**
(bargaining directly with Ees at meeting with Ees w/o U representative present)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(bargaining with Ees over piece work rates at time when collective-bargaining agreement in effect violative)

Top Manufacturing Company, Inc. **249 NLRB No. 055**
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

B. N. Beard Company **248 NLRB No. 016**
(bargaining directly with individual Ees by offering them terms and conditions of employment differing substantially from those set forth in U contract, unlawful)

Kaiser-Permanente Medical Care Program **248 NLRB No. 024**
(although contract provides exception to overtime rates where Ee requests particular work schedule, direct solicitation of Ees concerning waivers of right to overtime pay in order to institute new departmentwide schedule, violative, since E bypassed U in dealing directly with Ees on terms of employment)

The Saloon, Inc. **247 NLRB No. 156**
(E's conduct in touting its medical/dental program to Ees directly, as alternative to U health and welfare coverages, unlawful)

Raines Lincoln-Mercury, Inc. **JD-224-80**
(promising Ees improved benefits directly on conditions that they get rid of U, unlawful)

S & W Motor Lines, Inc. v. N.L.R.B. **621 F.2d 598 (C.A. 4, 1980)**
(bonus payments during strike to non-striking over-the-road drivers not violative of 8(a)(5) as attempt to bypass U or as unilateral change in conditions of employment where E was struggling to keep operations going; cases where bonuses were paid after strike, distinguishable)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(concerning mandatory subjects of collective bargaining)

6067-2040-4500 Refusal to release employee committee members for bargaining

Circle X Corporation **JD-(SF)-222-80**
(refusing U's request to meet with full U negotiating committee which contained unit Ees at a reasonable hour to discuss contract, unlawful)

N.L.R.B. v. Indiana and Michigan Electric Company **599 F.2d 185 (C.A. 7, 1979)**
(E's refusal to grant Ee, who was bargaining representative for units other than his own and attended negotiations in other units, time off to attend bargaining sessions during work time, or to schedule sessions during off-duty time, unlawful, since it effectively denied Ees representation by Ee; E may not refuse to bargain with U bargaining committee or committees simply because U is coordinating various bargaining efforts and E fears U may use coordination to force it into company wide negotiations)

6067-2040-7000 Recognition of minority union

Independent Association of Steel Fabricators, Inc.; etc. **252 NLRB No. 129**
(on ct remand, Bd in issuing bargaining order overruled ALJ finding that member of E-association withdrew from association and executed contract with outside U while entertaining good faith doubt of incumbent U's continued majority, where record was devoid of any objective factors w/i E's knowledge on which it could have reasonably relied to conclude that majority of its seven Ees no longer supported incumbent U)

Stroehmann Brothers Company **252 NLRB No. 139**
(new owner's recognizing U as representative of shipping Ees who historically were in unit of another U, violative, where U did not represent uncoerced majority of shipping Ees)

6067-2040-8000 Undermining authority of representative

Merillat Industries, Inc. **252 NLRB No. 114**
(E's refusal to allow U president to attend grievance meeting to act as advisor, not unlawful where contract was silent as to any right of U president to attend such meetings and absence of such practice in past represents closest approximation of evidence of how E and U would have decided issue in contract negotiations)

Stroehmann Brothers Company **252 NLRB No. 139**
(new owner of business entering into contract and honoring same with U purporting to cover unit of shipping Ees historically represented by another U, violative)

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(violation where, subsequent to notification by U of its intent to negotiate new bargaining agreement, E's president directed preparation in its office of letters rejecting U which were presented to unit Ees for their signatures by E's general manager)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**

(discussing with Ee issue of insurance being negotiated at time shortly after E posted notice of cancellation of major medical benefits, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(violation where E informed Ees that they should go to U meeting and vote to pay increased insurance rate or Ees of another department would vote it down and they would all be w/o jobs)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Lucy's, Inc. **JD-832-79**
(E's distributions of letters to Ees which it had received from U concerning progress of negotiations and U's position concerning same with attached letters from E which attached letters from E which attacked authority of U's negotiating team, unlawful, where distributions were intended to create division between Ees and U)

6067-2040-8050 Promotion repudiation

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(E's posting of bargaining minutes which occasionally mistated positions taken by U, made some reference to U's mbargaining representative being unprepared, and blamed U for keeping E's representatives waiting, not violative, where no threats contained in minutes and no demand or urging that U be repudiated)

6067-2040-8075 Denying bargaining representative access to employer's premises

Tom's Ford, Inc. **253 NLRB No. 125**
(E's ordering U representative out of shop and causing him to be removed by police from shop floor in presence of Ees held to constitute unlawful interference with Ees' right to select representatives for bargaining and presenting grievances where U representative had contractual right to investigate grievances and was investigating complaint that E was discriminating against U members in breach of contract by granting preferential treatment to nonmembers)

Yet Wah Restaurant **251 NLRB No. 010**
(E's refusal to allow U access to its premises to administer valid contract still in effect which included proviso allowing U access for this purpose, unlawful)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(denial of access by U representatives to E's premises as provided in agreement unlawful)

6067-2050 Commission of ULP

Douglas & Lomason Company **253 NLRB No. 039**
(E's withdrawal of recognition and refusal to bargain, unlawful since they occurred in context of ULP's committed by E)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand requiring Bd to admit newly discovered evidence pertaining to post-hearing agreements reached by parties covering separate units of maintenance and janitorial Ees, Bd affirmed ALJ's conclusion that, while E asserted in good faith its economic proposals when dealing with U over janitors, such motivation did not legitimatize its conduct in bargaining over maintenance Ees since, during such bargaining E was committing serious ULPs which directly impeded and adversely affected bargaining)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's refusal to bargain, unlawful, where U was Ee majority representative and E, by its unlawful conduct, prevented a free and fair election from being held, thereby impeding election process w/i meaning of Trading Post)

6067-2050-1000 Assisting favored union

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(support for, recognition of, and dealing with asssited U while undermining organizing campaign of rival U, unlawful)

6067-2050-1400 Antiunion campaign or actions precluding fair election

Century Moving & Storage, Inc. **251 NLRB No. 083**
(E's discriminatory conduct directed to two known U supporters and affecting two of seven unit Ees, violative and remedy was bargaining order, since conduct was calculated and tended to dissapate and erode possibility of holding free election)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(refusal to bargain with U with card majority requesting recognition and bargaining followed by pattern of ULP's precluding fair election, unlawful)

Olympic Medical Corporation **250 NLRB No. 011**
(violation where E refused to recognize and bargain with U as majority representative of Ees while coterminously refusing to grant scheduled periodic wage increases to Ees and instituting retroactive change in policies)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(violation, where after request by U which enjoyed majority status E refused to recognize and bargain with such U and commenced to engage in serious ULPs violative of 8(a)(1) and (3))

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

Alumbaugh Coal Corporation **247 NLRB No. 112**
(refusal to recognize U with majority status followed by numerous ULPs, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(refusal to bargain with U that had majority while coterminously engaging in ULPs, unlawful)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(widespread and extensive campaign which included coercive speeches, threats, interrogations and other coercive conduct, promises and grants of benefits, solicitations of grievances, disciplinary harassment, and warnings and discharges for Ee's U activities)

6067-2050-3500 Bargaining directly with employees

Exxon Company, U.S.A. **253 NLRB No. 027**
(offering nonU members of unit same insurance plan as offered to non unit Ees, violative where contract gave U exclusive right to administer health plan, notwithstanding U made unilateral change by charging non-U Ees service fee)

Western Truck Services, Inc. **252 NLRB No. 096**
(promising Ees contract which *might contain better benefits* in order to undermine U's status, violative)

Carbon Specialties, Inc. **JD-510-80**
(dealing directly with Ees in negotiation and grant of bonus benefits, violative)

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-86-80**
(by soliciting Ees to enter into individual employment contracts)

6067-2050-4200 Discrimination or threat thereof

Eastern Maine Medical Center **253 NLRB No. 024**
(E failed to bargain in good faith and instead bargained with determination not to reach agreement and to undermine U, in view of E's conduct in discriminatorily withholding wage increases and fringe benefits from unit Ees, publicizing withholding of benefits while at same time offering lower wage increase than Ees would have received had they not selected U, and refusing to consider retroactive payment of withheld wage increase during bargaining)

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**

American Pistachio Corporation **249 NLRB No. 174**
(discharge of two leading U activists in unit of five Ees on same day E received bargaining demand, in addition to unlawful interrogation, unlawful)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

South Shore Hospital v. N.L.R.B. **630 F.2d 40 (C.A. 1, 1980)**
(E's refusal to make proposed wage increases for represented Ees in its final offer retroactive so as to equal wage increases already granted its unrepresented Ees, unlawful where its stated business reasons that it would be disadvantageous for it to do so resulted from its own unlawful bargaining strategy)

6067-2050-4900 Statements

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(withdrawal of recognition, after E had threatened striking Ees with statements that replacements would be hired and that these replacements' seniority would be superior to that of returning strikers, unlawful, where Ees felt continued concern about potential loss of employment)

Lucy's, Inc. **JD-832-79**
(store manager's statements to Ees that they should abandon U and form or join another U, unlawful, where made in context of U's efforts to negotiate new contract as well as in context of E's other ULP's)

6067-2050-5600 Interrogation

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

6067-2050-7000 Lockout or threat thereof

Harding Glass Industries **248 NLRB No. 091**

6067-2050-7000—Cont.

(refusal to reinstate ULP strikers after they requested reinstatement constitutes lockout)

6067-2050-8400 Shutdown

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(unilaterally transferring all work to another facility and closing plant after U won election, violative)

6067-2060 Proposals and demands

6067-2060-1800 Less favorable proposals than previously offered

Pittsburgh--Des Moines Steel Co. **253 NLRB No. 086**
(E's withdrawal of its original proposals tentatively agreed upon by U during negotiations for new contract, and substituting, w/o explanation, regressive proposals to U concerning U security, checkoff, picket line and right to strike provisions held violative, since E's reasons for, and timing of, its actions bore no relation to restrictive changes proposed; E's overall course of conduct evidenced intent to frustrate bargaining)

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(offer of 3-1/2 month contract)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(offering less favorable proposals than previously offered on *take it or leave it basis*)

6067-2060-2700 Initial and final proposals essentially the same

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

6067-2060-3300 Insistence on illegal or unreasonable provisions

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(offer of 3-1/2 month contract)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(E's insistence during negotiations on giving nonstrikers and replacements recall rights over strikers in event of layoff, unlawful, since granting of superseniority violates 8(a)(3), and insistence on such unlawful superseniority plan violates 8(a)(5), even though no layoff had occurred and thus no striker had been injured; however, 8(a)(5) allegation herein regarding layoff recall rights dismissed since GC did not meet burden of proving that E insisted on such plan)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(while agreeing with ALJ's finding that E's inistence during negotiations on proposal depriving strikers of accrual of seniority for period they were on strike was unlawful, Bd disavowed ALJ's reliance on any adverse effect E's seniority plan might have on strikers' pensions, vacation, or other substantive benefits)

Interstate Paper Supply Company, Inc **251 NLRB NO. 189**
(agreement, insisted upon by E during negotiations, that strikers be deprived of accrual of seniority for period they were on strike, would be unlawful regardless of whether GC proved anti-U motivation on part of E; implementation of proposal would be inherently destructive of Ee rights due to potential impact it would have on their employment tenure with E, and E failed to present evidence of any business justification for its action; consequently, by insisting on agreement violative of 8(a)(3) had it been implemented, E violated 8(a)(5))

Newspaper Printing Corporation v. N.L.R.B. **625 F.2d 956 (C.A. 10, 1980)**
(E's insistence to impasse on jurisdictional unit clause which modified unit description so as to give E unilateral control over unit scope unlawful in view of unlawfulness of both insistence on modification of unit scope and insistance to impasse on non-mandatory subject of bargaining; moreover, clause allowing E to change unit composition at will by unilaterally transferring work out of unit would deprive unit Ees of collective representation and bargaining over reduction or elimination of their jobs by work transfers or automation)

6067-2060-3317 Discriminatry seniority clause

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(E insistence, during contract negotiations, on proposal depriving strikers of accrual of seniority for period Ees were on strike, violative, since they could be penalized for strike activity in manner which could affect their tenure of employment, and it is well settled that, except to the extent that a striker may be replaced during an economic strike, his employment relationship cannot otherwise be severed or impaired because of his strike activity)

6067-2060-3367 Withdrawal of ULP charges

Carbonex Coal Company **248 NLRB No. 107**

Patrick & Company **248 NLRB No. 061**
(E's insisting to impasse, after U submitted new contract proposal which accepted E's wage offer, that U withdraw ULP charges filed with Bd as condition of resuming negotiations and refusing to sign extension of recently terminated agreement prior to any withdrawal of charges, unlawful)

6067-2060-4900 Contract to expire within certification year

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(proposing contract term limited to end of certification year, violative)

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

6067-2060-6100 Rejection of proposal by union

Indiana Bell Telephone Company, Inc. **252 NLRB No. 085**
(no violation where E at first would only arbitrate contractual grievances at its location but later offered to alternate with U in choosing site; moreover, E has no obligation to conduct all arbitrations at plant location, U's choice)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(failure to cast out U's proposal before rejecting it)

6067-2060-6600 Illegal or unreasonable demands

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(insisting that *pro-company* Ees be permitted to participate in selection of U stewards)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E's seeking to impose contractual limitations on number of stewards available for handling grievances not bad faith bargaining where E was willing to pay stewards for time lost and U was making demands for authority, seniority and mobility of stewards)

Cable Vision, Inc. **249 NLRB No. 062**

Tasman Sea, Inc. **247 NLRB No. 007**
(E's refusal to enter into bargaining agreement absent U's written guarantee that E be permitted to deviate from contract by making health and welfare payments on behalf of only portion of unit Ees, unlawful, since such insistence has effect of causing U to breach its statutory obligation to fairly represent all unit Ees; neither U's previous acquiesance nor reluntant agreement absolves E from bargaining obligation)

Tasman Sea, Inc. **247 NLRB No. 007**
(E requiring as condition precedent to entering into bargaining agreement that U not seek to enforce U security clause, unlawful)

South Shore Hospital v. N.L.R.B. **630 F.2d 40 (C.A. 1, 1980)**
(repeated refusal to discuss wages and major economic benefits until after resolution of E's proposals for reductions in prior benefits, unlawful)

6067-2060-7700 Right of unilateral modification reserved by employer

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(E's demanding management rights clause which would in effect retain for itself sole right to transfer, suspend, or discharge Ees for any reason, to make and enforce rules, to determine prices and services sold and furnished to Ees, to determine volume and rate of production, to redetermine number and location of operations and to discontinue operations, to subcontract work, to establish new job classifications and rates of pay; and further providing that E *retains all rights not otherwise specifically covered by this agreement*)

Newspaper Printing Corporation v. N.L.R.B. **625 F.2d 956 (C.A. 10, 1980)**
(E's insistence to impasse on jurisdictional unit clause which modified unit description so as to give E unilateral control over unit scope unlawful in view of unlawfulness of both insistence on modification of unit scope and insistance to impasse on non-mandatory subject of bargaining; moreover, clause allowing E to change unit composition at will by unilaterally transferring work out of unit would deprive unit Ees of collective representation and bargaining over reduction or elimination of their jobs by work transfers or automation)

6067-2060-9400 Withdrawal of proposals

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

Capitol-Husting Company, Inc. **252 NLRB No. 009**
(where E agreed to match any proposal which U could obtain from either one of E's two named competitors, E's reneging on its agreement when confronted by U with such proposal, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E's bad faith shown by fact that after ULP strike ended and U's strength had disapated, E withdrew offers previously made and agreements previously reached demonstrating its earlier predictions that Ees would be better off without U)

6067-2070 Imposing conditions

6067-2070-5000 As to procedure in bargaining sessions

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

6067-2070-6700 Conditions outside area of mandatory bargaining

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

6067-2070-6770 Appropriate unit

National Steel Service Center, Inc. **JD-395-80**
(E's insisting to impasse on change in scope of unit, unlawful, since scope of unit nonmandatory subject of bargaining)

6067-2070-6780 Insistence upon stenographic transcript of negotiations

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(it would be contrary to policy of Act, which mandates negotiation over substantive provisions of E-Ee relationship, to permit negotiations to break down over presence of ct reporter at negotiating session, since issue did not involve *wages, hours and other terms and conditions of employment; issue was one of preliminary procedure*)

6067-2080 Uncompromising attitude or refusal to make concessions

6067-2080-1200 Intransigence

Eastern Maine Medical Center **253 NLRB No. 024**
(E's intransigent position in refusing to bargain in good faith was evidenced by its refusal to even consider reaching tentative agreement on economic matters until either noneconomic issues or acceptance of its noneconomic proposals was resolved; by postponing economic bargaining to end of negotiations, E reduces flexibility of bargaining and narrows range of possible compromises with result of rigidly and unreasonably fragmenting negotiations)

Roberts Oldsmobile, Inc. **252 NLRB No. 035**
(E's proposed strike settlement agreement not violative of 8(a)(3) nor 8(a)(5) notwithstanding that the proposal included provision for withdrawal of ULP charges pending as result of the strike, where contrary to GC's contention there is no evidence that E established, as unyielding term of reinstatement of strikers, that ULP charges be withdrawn by U or that E insisted on such withdrawals as condition precedent to resumption of bargaining)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to negotiate over pay of group leaders who comprise part of bargaining unit)

Cable Vision, Inc. **249 NLRB No. 062**

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(rigid insistence, for purpose of precluding agreement on terms other than erosion of U's role as representative, on open shop provision, on grievance procedure with limited U role, and on merit wage increase system w/o U participation in its operation, unlawful)

6067-2080-2500 Nominal or illusory concessions do not establish good faith

K Mart Corporation v. N.L.R.B. **626 F.2d 704 (C.A. 9, 1980)**
(offers of little or no wage increase, delay in presenting proposal and refusal to supply information to substantiate E's claim that it was unable to pay salary increase constitute bad faith bargaining)

6067-2080-3700 Wage increases and other unilateral changes in employment terms

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(elimination of pension plan and substitution of direct payment which Ees could use for IRA pension funds)

Patrick & Company **248 NLRB No. 061**
(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

South Shore Hospital v. N.L.R.B. **630 F.2d 40 (C.A. 1, 1980)**
(E's refusal to make proposed wage increases for represented Ees in its final offer retroactive so as to equal wage increases already granted its unrepresented Ees, unlawful where its stated business reasons that it would be disadvantageous for it to do so resulted from its own unlawful bargaining strategy)

6067-2080-4300 Union-security provisions

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(E's contention that collection of U dues not E's responsibility, would constitute endorsement of U, and assertion of philosophical objections to checkoff does not satisfy statutory obligation to bargain, particularly where E did not ban solicitation for other causes; further, checkoff serves public good)

6067-2080-4400 No-discrimination provision

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(E's rejection of provision prohibiting racial or sexual discrimination, unlawful, notwithstanding E's contention unnecessary because law already prohibits discrimination and that it had not and did not intend to discriminate)

6067-2080-5600 Failure to make counter-proposals

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

6067-2080-6200 Insistence on unilateral power to act on matters within employment relationship

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(insisting that *pro-company* Ees be permitted to participate in selection of U stewards)

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(E's demanding management rights clause which would in effect retain for itself sole right to transfer, suspend, or discharge Ees for any reason, to make and enforce rules, to determine prices and services sold and furnished to Ees, to determine volume and rate of production, to redetermine number and location of operations and to discontinue operations, to subcontract work, to establish new job classifications and rates of pay; and further providing that E *retains all rights not otherwise specifically covered by this agreement*)

6067-2080-6900 Refusal to arbitrate grievances

6067-2080-6900 Refusal to arbitrate, grievance or interference with arbitration machinery

Indiana Bell Telephone Company, Inc. **252 NLRB No. 085**
(no violation where E at first would only arbitrate contractual grievances at its location but later offered to alternate with U in choosing site; moreover, E has no obligation to conduct all arbitrations at plant location, U's choice)

Independent Stave Company **248 NLRB No. 025**
(E's failure to comply with arbitrator selection clause of current agreement with U held violative; E's position, attempting to spread arbitration work equally among five chosen arbitrators, blocked the arbitration provision entirely, and was mid-term modification of agreement w/o consulting with U)

Alstate Coin Machine Co., Inc. **JD-(SF)-272-79**
(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

6067-2090 Totality of conduct

Pittsburgh--Des Moines Steel Co. **253 NLRB No. 086**
(E's withdrawal of its original proposals tentatively agreed upon by U during negotiations for new contract, and substituting, w/o explanation, regressive proposals to U concerning U security, checkoff, picket line and right to strike provisions held violative, since E's reasons for, and timing of, its actions bore no relation to restrictive changes proposed; E's overall course of conduct evidenced intent to frustrate bargaining)

Eastern Maine Medical Center **253 NLRB No. 024**
(E's conduct throughout negotiations evidenced intent not to bargain in good faith and to undermine U as Ee representative, demonstrating classic case of E who is prepared to sit at bargaining table almost forever and to make concessions here and there as means by which to conceal a purposeful strategy to make bargaining futile or to fail)

Pease Company **251 NLRB No. 080**
(where ALJ found that by its unlawful conduct herein, E had demonstrated intent not to veer from its previously established conduct which Bd had found unlawful in prior case, and that such conduct, taken as a whole, constituted a further violation of 8(a)(5) and (1), Bd found such additional finding unwarranted inasmuch as no such *overall* allegation was specifically alleged as violation or fully litigated at hearing)

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(violation, where E had fixed intent not to reach agreement respecting U security and checkoff, demanded, in effect, as condition to contract, retention for itself right of unilateral modification of working conditions, and in addition, proposed management rights clause where E retained all rights not otherwise specifically covered by agreement, and refused to consider no discrimination provision)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

6067-2090—Cont.

(rigid insistence, for purpose of precluding agreement on terms other than erosion of U's role as representative, on open shop provision, on grievance procedure with limited U role, and on merit wage increase system w/o U participation in its operation, unlawful)

Clyde W. Dent Carpet Installation, Inc. **JD-389-80**
(E held to have refused to bargain in good faith where E, on several occasions, failed to meet with U at previously scheduled times; from the outset of bargaining, E's negotiator expressly voiced his belief that bargaining was futile and E went through the motions of negotiations without any serious intent to adjust differences and reach acceptable common ground)

H. H Fredericksen Co. **JD-(SF)-64-80**
(E's general course of conduct, considered in totality, did not reflect E's purpose to frustrate or forestall contractual consensus, as evidenced, among other considerations, by absence of *meeting of the minds* or of consensus with respect to specific contract terms, and by fact that E's draft proposals cannot be considered clear repudiation of some tentative consession previously reached, and that E's bargaining tactics, though clearly firm, reflected no persistent or pervasive rigidity)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(from totality of evidence concerning circumstances of bargaining, Bd could rationally infer E had not bargained in good faith as required by Act)

6067-4000 Unilateral change in term or condition of employment

6067-4001 Generally

Charmer Industries, Inc. **250 NLRB No. 031**
(contention that unilateral change in procedures for collecting c.o.d. payments by having salesmen replace drivers, represented in another unit, in making collections was caused by circumstances beyond Es' control as a consequence of change bargained for in drivers' contract, rejected; execution of agreement with drivers' U did not fall w/i category of *external influence, outside agencies* or *external contingencies* which adversely affected interests and *environment* of salemen)

6067-4001-1700 What constitutes change

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

6067-4001-1750 Failure to abide by contract

Paramount Potato Chip Company, Inc. **252 NLRB No. 117**
(E's refusal to arbitrate grievances and post seniority list violative where both were provisions contained in collective bargaining agreement)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally discontinuing compliance with hiring hall provisions of contract, violative)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally failing to honor dues deductions authorizations of unit Ees and failing to disburse such dues to U in accordance with terms of contract, violative)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**
(utilizing non-U subcontractors for carpentry work in violation of contract, discharging and failing to recall all bargaining unit Ees, and assigning their work to nonbargaining unit Ees w/o negotiating with U violative)

The Nestle Company, Inc. **251 NLRB No. 142**
(violation where E failed to apply pension minimum retroactively, as negotiated, and unilaterally imposed changes in contractual pension plan w/o consent of U)

Newspaper Printing Corporation **250 NLRB No. 132**
(additional unilateral changes after impasse in existing terms and conditions of employment held violative)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**
(violation, where successor E, who had hired majority of unit Ees of predecessor, unilaterally changed conditions of employment in contract between U and predecessor E, since at time of hiring it did not indicate any intent to change conditions; E's contention it did not employ full Ee complement at time commenced operations rejected, in view of fact complement did not increase)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contribution to funds, it violated Act, notwithstanding cost to E remained same)

Independent Stave Company **248 NLRB No. 025**
(E's refusal to remit checked-off dues to U held violative, since E failed to comply with checkoff provision in current contract; provision in E's authorization ptn that check-off dues be placed in escrow rather than be paid over to U deprived U of dues which Ees were obligated to pay)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Newspaper Printing Corporation **JD-203-80**

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-86-80**
(failure to make payments to various U funds as required in agreements with U, violative)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(where two companies were found single E and their Ees were found appropriate unit, E's refusal to apply contract that U had with one company to other company held unilateral change of terms and conditions of employment and unlawful)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**
(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding asserted good faith doubt of majority U status, where E did not notify U of intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

6067-4001-2500 Changes greater than offered union

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unilateral increase of wage rates of unit Ees in excess of amount offered by E in final proposal)

6067-4001-3300 Effect of announcement or offer of change

Island Typographers, Inc. **252 NLRB No. 003**
(10(b) period begins to run when U first has notice of unlawful unilateral change)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(announcing to Ees that it was implementing new wage program prior to breakdown of negotiations, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(unilaterally posting notice that falsely advised Ees that their major medical insurance was cancelled, violative)

6067-4001-3700 Adequacy of notice of change to permit bargaining

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(defense of *waiver* not available to E where E granted unit Ees merit wage increases, percentage wage increases, and extra paid holiday w/o giving U sufficient opportunity to bargain over those unilateral changes which it wanted to do, E and U had made no attempt to bargain on any economic issue during initial negotiations, hence neither party could contend that impasse had been reached justifying unilateral action)

6067-4001-3700—Cont.

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(unilaterally laying Ees off, violative, where, notwithstanding U's knowledge that one Ee was to be laid off, U had no notice of extent of layoff nor sufficient notice to obligate it to request bargaining prior to effective date of layoff)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

6067-4001-4600 Adequacy of bargaining

Newspaper Printing Corporation **JD-203-80**

6067-4001-5000 Favorable to employees

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that E's treatment of new non-U Ees hired to replace strikers who had refused its offer of reinstatement did not indicate bad faith bargaining, where E applied to them wage provisions of existing contract; E's failure to reduce new Ees' wages, while having U agree to reduction in wages because of E's precarious financial condition, was not an unreasonable business decision and did not adversely reflect upon E's good faith in dealing with U since exclusion of new Ees from contracts fringe benefits gave strikers higher combined compensation rate)

6067-4001-6700 Unfavorable to employees

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6067-4001-7500 Changes prior to bargaining obligation

Westwood Import Company, Inc. **251 NLRB No. 162**
(while successor E is ordinarily free to set initial terms on which it will hire Ees of predecessor, where successor E did not mention changes in conditions of employment in interviews with Ees of predecessor, unilateral changes instituted after hiring Ees cannot be considered as initial conditions of employment under *Burns* and thus violative)

6067-4001-8500 Changes before impasse

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(no impasse existed where parties had signed stipulation agreement setting forth method for resolving their differences; E's refusal to abide by agreement and unilateral change of wage rates of Ees violative)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where E made proposal during bargaining session, U official expressed doubt that members would accept but took provision to members for vote and E implemented change w/o waiting for results, E violated Act as no impasse existed)

6067-4001-8700 Changes after impasse

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(E cannot take advantage of *impasse* when it was caused in large part by E's own unlawful conduct in unilaterally granting wage increases and benefits during contract negotiations)

Newspaper Printing Corporation **250 NLRB No. 132**
(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

Newspaper Printing Corporation **250 NLRB No. 132**
(additional unilateral changes after impasse in existing terms and conditions of employment held violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally implemented its contract proposals when there was no impasse)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

6067-4001-9100 Changes after expiration of contract

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(unlawful)

Island Typographers, Inc. **252 NLRB No. 003**
(where E, more than 6 months prior to charge being filed, unilaterally and openly introduced cold type process operated by non-U Ees without U's timely objection, no violation and E's action effectively changed terms of unsigned contract so as to exclude cold-type work from jurisdiction of U)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Peerless Roofing Co., Ltd. **247 NLRB No. 072**
(refusal to pay contributions on behalf of Ees into U's pension, welfare, and similar trust funds upon expiration of contract, violative where cessation of such payments was not reasonably encompassed in E's offers during collective bargaining, and U did not waive right to bargain issue; such plans constitute aspect of Ee wages and term and condition of employment which survives expiration of contract and cannot be altered w/o bargaining)

6067-4001-9500 During pendency of postelection objections

Han-Dee Pak, Inc. **253 NLRB No. 126**
(in supplemental decision Bd found unilateral changes in job classifications and rates of pay for unit Ees after conduct of R election, but *prior* to determination of outcome of election won by U, violative, since E acted at its peril in making such changes pending resolution of objections)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(unilateral granting of raises and changes of Ee status done while validity of decertification election in doubt, violative)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

6067-4011 Failure to bargain before making economically motivated operating decision which has effect on unit

6067-4011-0100 Generally

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

6067-4011-0167 Destructive effect on unit

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

530-EMPLOYER OBLIGATION TO BARGAIN

6067-4011-1100 Subcontracting unit work

W. G. Best Homes Corporation **253 NLRB No. 123**

(obligation to bargain regarding subcontracting *requires E to notify U involved of proposed subcontracting agreement and give U opportunity to discuss decision and consider alternative proposals; normally, U must be notified of proposed subcontract eliminating unit jobs before execution of agreement, nor is mere statement of general intent to subcontract in future sufficient prior notice where subsequent bargaining occurs in context of fait acompli; where, however, U is given full opportunity to bargain about executory contract, which may be rescinded, proma facie showing of violation because of failure to give U prior notice excused*)

W. G. Best Homes Corporation **253 NLRB No. 123**

(E's failure to bargain regarding subcontracting its transportation department, not unlawful, where U failed to request bargaining regarding subcontracting, notwithstanding U was apprised of E's economic problems and on notice of its intent to subcontract its transportation department to cut costs)

Olinkraft, Inc. **252 NLRB No. 185**

Olinkraft, Inc. **252 NLRB No. 185**

(unilaterally subcontracting unit work w/o affording U timely notice and opportunity to bargain, violative where contract provided that all routine maintenance work would be performed by unit Ees)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

(no violation where E failed to return work subcontracted during strike to unit after termination of strike where contracting out simply effort to avoid economic consequences of strike and absent evidence to what extent work contracted out differed in nature from E's past practice prior to strike)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**

(utilizing non-U subcontractors for carpentry work in violation of contract, discharging and failing to recall all bargaining unit Ees, and assigning their work to nonbargaining unit Ees w/o negotiating with U violative)

Carbonex Coal Company **248 NLRB No. 107**

(E's subcontracting of 100 percent of its hauling operation which resulted in layoff of 2 Ees, violative)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractees w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**

(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

Tribal American Consulting Corporation **JD-(SF)-314-80**

(continuing to subcontract bus driver's work after end of strike, violative where U was not consulted, and E failed to bargain by sending representative who had no authority to bind E)

6067-4011-2200 Change to reliance on independent contractors or franchisors

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

6067-4011-3300 Leasing or selling portion of operation

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**

(E's sale of 2 of its 30 trucks 3 months after strike which had no effect on Ee's job did not violate Act)

6067-4011-3800 Sale of operation

National Car Rental System, Inc. **252 NLRB No. 027**

(E's refusal to notify U representing contract unit of E's garagemen and mechanics of its decision to sell bulk of its accounts and sublease truck rental facility and transfer remainder of accounts to new location not violative, since sale was decision *essentially financial and managerial in nature* involving *significant investment or withdrawal of capital* affecting *scope and ultimate direction of enterprise*; it was speculative that relocation of operations would have had any adverse impact on Ees because of time period between proposal and actual commencement or relocated operations)

6067-4011-4200 Spinoff or transfer of operations

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**

(E's decision to alter its marketing structure from branch office responsibility to new marketing hierarchy not mandatory subject of bargaining, since decision involved sale of significant assets, fundamental changes in marketing structure and significant reallocation of capital notwithstanding changes may have profound effect on employment conditions)

6067-4011-4400 Partial termination of operation

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**

(initial presumption exists that economically motivated partial closing is mandatory subject of bargaining; however, balancing test must be applied in each case to determine whether duty to bargain over decision to close exits and here though E's decision to close based on valid economic reasons, there were no compelling reasons which would have prohibited E from bargaining and its refusal violative, especially where closing not based on sudden or unanticipated situation requiring immediate action)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. **JD-261-80**

6067-4011-4600 Transferring work

Universal Security Instruments, Inc. **250 NLRB No. 092**

(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractees w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

6067-4011-4800 Elimination of jobs

Associated Grocers **253 NLRB No. 005**

(unilaterally establishing, and setting wage rate for bargaining unit's new cashier position and offering to bargain after change effected, violative)

Island Typographers, Inc. **252 NLRB No. 003**

(E's unilateral action of terminating hot-type method of production and laying off its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Miami Foundry Corporation **252 NLRB No. 002**

(single integrated enterprise resulting from acquisition of stock liable for new owner's unilaterally abolishing jobs and terminating unit Ees)

Wellman Industries, Inc. **248 NLRB No. 029**

(unilateral elimination of jobs, unlawful)

Wellman Industries, Inc. **248 NLRB No. 029**

(unilateral elimination of one department's third shift)

6067-4011-5500 Termination of operations

Hillcrest Furniture Manufacturing Co., Inc. **253 NLRB No. 009**

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractees w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

U.S. Pipe & Foundry Company and Winfrey Enterprises, Inc. **247 NLRB No. 012**

(no violation where one joint E by previously giving notice to U of cancellation of contract which affected employment of Ees fulfilled duty of other joint E to notify U of same)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**

(E held to have had duty to bargain over decision to close one of its two plants, where bargaining would have vindicated U's interest, it would not have hampered E's decision to close in any way, and customer withdrawals of orders did not excuse failure to involve U in decision to close plant)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**

6067-4011-5500—Cont.

(E violated duty to bargain where E presented U with fait accompli and prevented U from participation in closing because of delay in informing U of decision to do so, and E would not give U a time table or ask for suggestions)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(proper moment of time at which E's motive is assessed is at time alleged ULP with respect to closing of plant is committed; effect of person's action normally is measured by looking at circumstances surrounding action at time it occurred, which includes careful scrutiny of manner in which E implements its decision to close)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(SCt's emphasis on purpose and effect means inquiry may not stop with basis for valid economic decision to close plant but must also consider manner of its implementation which may constitute ULP, and valid economic decision may not shield E where it has additional motive, as shown by timing, of chilling unionism)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's implementation and closing of one of its two plants, unlawful, where it was partial closing timed to chill unionism in remaining plant; E's purpose was to affect U election at remaining plant and E knew reasonably probable effect of the closing; and E precipitated customer withdrawal of orders and hastened the closing sooner than was economically justified, and it may not now profit from its own conduct by claiming withdrawals required a fast closing)

6067-4011-6600 Introduction of automated methods

Island Typographers, Inc. **252 NLRB No. 003**
(where E, more than 6 months prior to charge being filed, unilaterally and openly introduced cold type process operated by non-U Ees without U's timely objection, no violation and E's action effectively changed terms of unsigned contract so as to exclude cold-type work from jurisdiction of U)

6067-4011-6900 Change in manner of operation

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(failure of innkeeper operating motel and restaurant to bargain over conversion of restaurant to cafeteria, unlawful where situation was not so immediate and severe that bargaining would have been fruitless, there was no showing that bargaining would have substantially impaired efforts to negotiate with third party, and E made no substantial capital expenditures)

6067-4011-7700 Relocation of operations

National Car Rental System, Inc. **252 NLRB No. 027**
(E's refusal to notify U representing contract unit of E's garagemen and mechanics of its decision to sell bulk of its accounts and sublease truck rental facility and transfer remainder of accounts to new location not violative, since sale was decision *essentially financial and managerial in nature* involving *significant investment or withdrawal of capital* affecting *scope and ultimate direction of enterprise*; it was speculative that relocation of operations would have had any adverse impact on Ees because of time period between proposal and actual commencement or relocated operations)

Vitco Steel Supply Corp. **JD-103-80**

6067-4022 Failure to bargain over effect on unit of economically motivated operational decisions

6067-4022-0100 Generally

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

6067-4022-1100 Subcontracting unit work

Olinkraft, Inc. **252 NLRB No. 185**

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(violation where E, engaged in manufacture and sale of foam products, announced its unequivocal and final decision to go out of trucking business and then contracted out that part of its business and made no effort to prove that the decision was economically motivated, no effort to accommodate drivers in finding other employment and no response to U's bargaining request)

Arizona Public Service Company **247 NLRB No. 054**
(E's refusal to bargain over clause to replace subcontracting restrictions in contract after restrictions had been declared invalid under 8(e), unlawful, notwithstanding alleged *zipper* and *management rights* clauses relied on by E, where E was obliged to meet and negotiate on U's proposals after U made timely request to negotiate concerning subcontracting, but E refused to entertain any proposals calculated to restrict subcontracting of unit work)

6067-4022-3800 Sale of operation

National Car Rental System, Inc. **252 NLRB No. 027**
(refusal to bargain with U over effect on unit Ees of lawful sale of substantial portion of truck rental facility and relocation of remainder held violative, since combined effect of E's decisions was to have pronounced impact on represented Ees of E at sold facility as entire unit was being terminated)

6067-4022-4400 Partial termination of operation

Technicolor Graphic Services, Inc., South Dakota Operations **253 NLRB No. 075**
(failure to notify and bargain with U about effects of discontinuation of quality control group and reassignment of group members, unlawful)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(violation where E, engaged in manufacture and sale of foam products, announced its unequivocal and final decision to go out of trucking business and then contracted out that part of its business and made no effort to prove that the decision was economically motivated, no effort to accommodate drivers in finding other employment and no response to U's bargaining request)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(failure to bargain over effects of partial plant closure, violative)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E failed to bargain in good faith over effect of closing of one of its two plants where E told U E's proposal on severance pay was not bargainable, U understood E's proposal that it had bargained in good faith to be attempt to force U to abandon its ULP charges, and E's contentions are not responsive to scope of ct's review since determination of credibility issues raised by E are for Bd)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's implementation and closing of one of its two plants, unlawful, where it was partial closing timed to chill unionism in remaining plant; E's purpose was to affect U election at remaining plant and E knew reasonably probable effect of the closing; and E precipitated customer withdrawal of orders and hastened the closing sooner than was economically justified, and it may not now profit from its own conduct by claiming withdrawals required a fast closing)

6067-4022-4800 Transfer of work

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6067-4022-5500 Termination of operations

Ferro Mechanical Corp. **249 NLRB No. 083**

ABC Trans-National Transport, Inc. **247 NLRB No. 025**
(where E made economically based decision to cease operations and did not notify U until decision made, it violated Act because U was denied opportunity to bargain during critical time where such bargaining could have been productive)

American Boiler & Tank Co. **JD-420-80**

6067-4022-7700 Relocation of operations

National Car Rental System, Inc. **252 NLRB No. 027**
(refusal to bargain with U over effect on unit Ees of lawful sale of substantial portion of truck rental facility and relocation of remainder held violative, since combined effect of E's decisions was to have pronounced impact on represented Ees of E at sold facility as entire unit was being terminated)

Vitco Steel Supply Corp. **JD-103-80**

6067-4033 Unilateral change in remuneration or benefits (See also 530-6050-1600)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilaterally promising Ees advancement and other benefits and improvements in order to discourage their U activities, unlawful)

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(unilateral implementation of health plan change violative)

6067-4033-1300 Uniforms, etc.

Standard Homes, Inc. **249 NLRB No. 146**
(violation where E refused to pay Ees returning from layoff status the safety shoe allowance to be paid *regular employees* under the contract, since parties' past practice had shown that *regular employees* included Ees on layoff and that on recall to work they were entitled to receive said allowance)

6067-4033-1500 Use of company vehicles

Owen Lee Floor Service, Inc. **250 NLRB No. 070**

6067-4033-1500—Cont.

(E unilaterally informing Ees for whom bargaining agreement established hourly wage rate that they could either work as subcontractors on piece rate basis or quit and that each crew would be responsible for providing its own truck which E had previously provided)

6067-4033-2500 Wage

Han-Dee Pak, Inc. **253 NLRB No. 126**
(in supplemental decision Bd found unilateral changes in job classifications and rates of pay for unit Ees after conduct of R election, but *prior* to determination of outcome of election won by U, violative, since E acted at its peril in making such changes pending resolution of objections)

Sea Bay Manor Home For Adults **253 NLRB No. 968**
(no impasse existed where parties had signed stipulation agreement setting forth method for resolving their differences; E's refusal to abide by agreement and unilateral change of wage rates of Ees violative)

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(contention that unilateral wage increase was justified by imminence of anticipated Presidential wage freeze rejected, since anticipated wage freeze was not such special circumstance that would justify remedial action under *N.L.R.B. v. Benne Katz, etc., d/b/a Williamsburg Steel Products Co., 369 U.S. 736, 743 (1962)*)

Technicolor Graphic Services, Inc., South Dakota Operations **253 NLRB No. 075**
(unilateral increase, unlawful notwithstanding E promoted individuals involved to professional status, since there was in fact no change in these individuals' duties or status as bargaining unit Ees or requirement that E bargain about increasing their wages)

Eastern Maine Medical Center **253 NLRB No. 024**
(unilaterally imposed wage and benefit increase while U still represented Ees, unlawful; implementation of its last wage proposal, in absence of legitimate impasse is unlawful, and there can be no legally cognizable impasse justifying unilateral action if cause of deadlock is failure of one of the parties to bargain in good faith, which E herein failed to do)

Allen Materials, Inc. Debtor-In-Possession **252 NLRB No. 157**
(E's failure to grant wage increase when due under contract and delay of grant for several months, not unlawful, where U acquiesced in delay)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally increasing wage rates of unit Ees, violative)

L.B. Priester & Son, Inc. **252 NLRB No. 034**
(hiring and employing carpenters at wages lower than that provided in collective bargaining agreement)

Westwood Import Company, Inc. **251 NLRB No. 162**
(violation, where successor E, who had hired all but two of predecessor's Ees and was obligated to bargain, unilaterally raised wages of some Ees, and cancelled all accrued seniority, sick leave and vacation rights, and reduced number of paid holidays)

Pease Company **251 NLRB No. 080**
(unilateral grant of general wage increase, unlawful, despite fact that wages were discussed several times during negotiation meetings, where no impasse existed because of E's bad-faith bargaining; even if bona fide impasse on wages existed, unilateral wage increase was not consistent with E's previously rejected offers, and therefore was unlawful)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(granting wage increases to selected Ees w/o notice to U where general policy of withholding wage increases because of adverse conditions was in effect, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(announcing to Ees that it was implementing new wage program prior to breakdown of negotiations, violative)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(E unilaterally informing Ees for whom bargaining agreement established hourly wage rate that they could either work as subcontractors on piece rate basis or quit and that each crew would be responsible for providing its own truck which E had previously provided)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(unilateral replacement of cost-of-living increases with across-the-board wage increases, unlawful)

Hedison Manufacturing Company **249 NLRB No. 096**
(although granting of week's wages to Ees, 2 weeks before election, for time they were snowbound at E's plant because of great snowstorm was not violative of 8(a)(1), grant of such benefit w/o consultation with U held unlawful, since change in terms and conditions of employment, even for the better, is subject of bargaining)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(payment to Ees at higher wage rate than rate negotiated, unlawful)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contribution to funds, it violated Act, notwithstanding cost to E remained same)

P. A. Incorporated **248 NLRB No. 077**
(posting of notice announcing grant of unilateral wage increases, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral change by rehiring previously laid off Ees at higher rates, unlawful)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(violation by unilateral grant of wage increase by new E which was bound as alter ego of old corporation bearing contract with U)

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E's unilateral recission of wage increases granted while ALJ's decision on ULP charges pending and after ct had issued injunction against unilateral actions by E, unlawful, notwithstanding E's contention withdrawal of increase resulted from U's objection and threat to refer matter to NLRB for possible contempt proceedings since U's objection was to E's failure to bargain regarding increases rather than to granting *per se*)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(unilateral wage increase unlawful, since it came after E was obligated to bargain)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(unilateral 50-cent, across-the-board raise w/o notice, unlawful)

Industrial Uniform and Towel Service, Inc. **JD-(NY)-43-80**
(grant of increase in minimum wage rates, violative)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. **JD-261-80**
(refusal to pay wage increase)

Raines Lincoln-Mercury, Inc. **JD-224-80**
(unilateral grant and then recission of wage increases, unlawful)

H. H Fredericksen Co. **JD-(SF)-64-80**
(unilateral wage rate and fringe benefit changes, not unlawful, where genuine impasse developed sufficient to stall negotiations and privileged E's unilateral changes, and impasse was not subsequently dissipated when U submitted proposals which, however, did not reflect substantial concessions or change of position)

H. H Fredericksen Co. **JD-(SF)-64-80**
(unilateral granting, following impasse, of wage increases with retroactive date, not unlawful, notwithstanding that retroactive compensation had not been previously proffered to U during negotiations, and that E's condition precedent qualifying E's proposal on achievement of contract settlement was never satisfied; E's decision to grant retroactive wage increase did not disparage U's representative status nor constitute rejection of collective bargaining principles, and retroactive increases were reasonably comprehended w/i E's pre-impasse proposals)

Mather Federal Credit Union **JD-(SF)-8-80**
(unilateral change in E's last wage offer, unlawful, notwithstanding E's contention that impasse ensued because of failure to agree on other issues, where E's efforts to defeat Ees' statutory rights were not reconcilable with requirements of good faith bargaining)

Lucy's, Inc. **JD-832-79**
(E's unilateral grant of wage increases and other economic benefits when there was no impasse in bargaining, unlawful)

Southside Electric Cooperative, Inc. **JD-800-79**

6067-4033-2500—Cont.

(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(successor E's unilateral changes in wages, unlawful, where majority of Ees in unit were Ees of predecessor E and E had duty to bargain with U before making any changes)

6067-4033-2700 Wage decrease

Corrugated Structures, Inc. **252 NLRB No. 079**
(unilateral reduction in wages, not unlawful where U did not enjoy majority status at jobsite when wages were unilaterally reduced)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(lowering piece work rates and new hire rates)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to maintain predecessor E's wage levels, unlawful where successor adopted predecessor's contract with U)

B. N. Beard Company **248 NLRB No. 016**
(E's unilateral reduction of wage rates provided for in existing contracts with Us, unlawful; E's contention that it had no obligation to pay strike replacements wages set forth in contracts, rejected)

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E's unilateral recission of wage increases granted while ALJ's decision on ULP charges pending and after ct had issued injunction against unilateral actions by E, unlawful, notwithstanding E's contention withdrawal of increase resulted from U's objection and threat to refer matter to NLRB for possible contempt proceedings since U's objection was to E's failure to bargain regarding increases rather than to granting *per se*)

Ernst Construction, Div. of Ernst Steel Corporation **JD-826-79**
(violation, where E reinstated laid-off Ees at unilaterally established lower rates of pay; E and U had implemented practice of compensating Ees at rates higher than that called for in contract, subsequently E acquiescened in the continuing practice which survived prior instance of layoff and recall of Ees, and E took no steps before or during negotiations of current contract to abrogate, restrict, or alter continuing practice)

Southside Electric Cooperative, Inc. **JD-800-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

6067-4033-2900 Travel expenses

General Telephone Company of Ohio **248 NLRB No. 010**
(E's revision of its general instructions regarding travel on company time while working on distant job site held unlawful unilateral change)

6067-4033-3100 Overtime pay schedules

The Baughman Company **248 NLRB No. 186**
(unilateral change in computation of overtime pay on basis of unilaterally lengthened workday and workweek, unlawful)

6067-4033-4400 Holiday pay

Westwood Import Company, Inc. **251 NLRB No. 162**
(violation, where successor E, who had hired all but two of predecessor's Ees and was obligated to bargain, unilaterally raised wages of some Ees, and cancelled all accrued seniority, sick leave and vacation rights, and reduced number of paid holidays)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

The Saloon, Inc. **247 NLRB No. 156**
(E's failure, upon expiration of contract with U, to treat Memorial Day as paid holiday which was prior practice, unlawful)

6067-4033-4700 Employee loans

Pease Company **251 NLRB No. 080**
(unilaterally adding interest-free loan program to Ee benefits, unlawful, where program was neither proposed to U in negotiations nor discussed with U prior to its implementation)

6067-4033-5000 Bonus

Aeronca, Inc. **253 NLRB No. 026**
(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

Woonsocket Spinning Company **252 NLRB No. 163**
(deprivation of Christmas bonus where E announced it intended to give one, granting bonus to salaried Ees, refusing to inform U basis on which bonus computed for salaried Ees and threats that Ees had lost bonus because they supported U violative)

Memphis Furniture Manufacturing Co. **252 NLRB No. 025**
(unilateral modification of contractual Christmas bonus provision of contract, unlawful)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(withholding Christmas bonus, violative)

S & W Motor Lines, Inc. v. N.L.R.B. **621 F.2d 598 (C.A. 4, 1980)**
(bonus payments during strike to non-striking over-the-road drivers not violative of 8(a)(5) as attempt to bypass U or as unilateral change in conditions of employment where E was struggling to keep operations going; cases where bonuses were paid after strike, distinguishable)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

6067-4033-5500 Sick leave pay

Westwood Import Company, Inc. **251 NLRB No. 162**
(violation, where successor E, who had hired all but two of predecessor's Ees and was obligated to bargain, unilaterally raised wages of some Ees, and cancelled all accrued seniority, sick leave and vacation rights, and reduced number of paid holidays)

6067-4033-5900 Vacation scheduling and pay

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(changing method of computing vacation pay)

Allen Materials, Inc. Debtor-In-Possession **252 NLRB No. 157**
(E's nonpayment of vacation pay to Ees, unlawful notwithstanding E's inability to make such payments due to its bankruptcy where E's delay or refusal to pay vacation pay benefits constituted unilateral modification of its contractual obligation)

C. F. Martin & Co., Inc. **252 NLRB No. 167**
(withholding accrued vacation benefits from striking Ees which affected Ees in bargaining unit w/o notification or bargaining with U, violative)

Bay Medical Center, Inc. **252 NLRB No. 159**
(violation, where E unilaterally began computing vacation pay on hours worked rather than on hours paid, which was method provided in contract)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral recission of vacation pay of Ees laid off previous summer and refusal to negotiate as to reimbursement of such pay, unlawful)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor'E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

6067-4033-6300 Savings funds

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

6067-4033-6700 Merit wage increase

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(unilateral grant of merit increases prior to U certification, violative, where merit increases were not automatic, involved much discretion on part of E, and given at unpredictable time intervals; moreover, U did not waive its right to notice about each increase when it agreed during negotiations not to oppose such merit increases as long as increases were granted in accordance with certain specified time procedures)

Pease Company **251 NLRB No. 080**
(each unilateral grant of merit increases given to Ees pursuant to new pay system program, unlawful)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**

6067-4033-6700—Cont.

(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

6067-4033-7100 Incentive wage plans

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Hedison Manufacturing Company **249 NLRB No. 096**

6067-4033-7500 Service, attendance and other awards

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral improvement in attendance awards, unlawful)

6067-4033-8600 Dues

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

6067-4033-8800 Free food, beverages

Mission Childcare Consortium, Inc. **JD-(SF)-110-80**
(discontinuing policy of furnishing free meals to Ees at child care center who ate with children, unlawful)

6067-4033-9100 Pensions and group benefits

Allen Materials, Inc. Debtor-In-Possession **252 NLRB No. 157**
(E's failure to make payments to its Ees' health and welfare and pension funds under collective bargaining agreement, unlawful notwithstanding E was unable to make payments because it was bankrupt, where there was no evidence of U acquiescence in E's failure to make payment)

Western Truck Services, Inc. **252 NLRB No. 096**
(unilaterally discontinuing payments to health and welfare and pension funds as required by bargaining agreement and directly dealing with Ees, violative)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally discontinuing monthly contributions to health and welfare, pension, industry and apprenticeship funds, violative)

Bay Medical Center, Inc. **252 NLRB No. 159**
(E's unilateral change in method of computing contributions to annuity account, violative)

Capitol-Husting Company, Inc. **252 NLRB No. 009**
(unilaterally changing health insurance plans and pension plans for Ees at commencement of their strike, violative)

The Nestle Company, Inc. **251 NLRB No. 142**
(violation where E failed to apply pension minimum retroactively, as negotiated, and unilaterally imposed changes in contractual pension plan w/o consent of U)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(unilateral failure to make health and welfare and pension fund contributions and institution of provision for separately funded *medical benefits* program with sick leave and vacation benefits, unlawful)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(unilateral increase in insurance benefits, unlawful)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter-ego E who required rehired Ees to sign agreement stating that all fringe benefits would be paid directly to them instead of U and to hold them responsible for transfer of monies to U violated Act)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to maintain predecessor E's benefit levels, unlawful where successor adopted predecessor's contract with U)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contribution to funds, it violated Act, notwithstanding cost to E remained same)

B. N. Beard Company **248 NLRB No. 016**
(E's unilateral discontinuance of payments to health and welfare funds of two Us, unlawful, even assuming one U owed E credit for overpayment to pension fund, where E, despite U's request for bargaining, did not negotiate with U with respect to cessation of payments)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

The Saloon, Inc. **247 NLRB No. 156**
(E's unilateral discontinuance of contributions to welfare and retirement funds upon expiration of contract with U, unlawful)

The Saloon, Inc. **247 NLRB No. 156**
(E's conduct in unilaterally instituting its own medical/dental/life insurance program upon expiration of contract with U, as alternative to U health and welfare coverage, unlawful)

Peerless Roofing Co., Ltd. **247 NLRB No. 072**
(refusal to pay contributions on behalf of Ees into U's pension, welfare, and similar trust funds upon expiration of contract, violative where cessation of such payments was not reasonably encompassed in E's offers during collective bargaining, and U did not waive right to bargain issue; such plans constitute aspect of Ee wages and term and condition of employment which survives expiration of contract and cannot be altered w/o bargaining)

American Boiler & Tank Co. **JD-420-80**
(failure and refusal to make payments to pension trust fund as E was required to do under collective bargaining agreement unlawful, where it constitutes unilateral change in employment conditions)

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-86-80**
(failure to make payments to various U funds as required in agreements with U, violative)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(violation where E unilaterally ceased making health and welfare and pension fund contributions which are mandatory subjects of bargaining)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(unilateral refusal to pay fringe benefits required by contract, unlawful)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(unilateral refusal to pay fringe benefits required by contract, unlawful)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

6067-4033-9500 Insurance

Exxon Company, U.S.A. **253 NLRB No. 027**
(unilateral mid-term modification by making available to unit Ees health insurance plan formerly available only to non-unit Ees, violative where contract gave U exclusive right to administer medical plan, notwithstanding U made unilateral change by charging nonU Ees service fee)

Capitol-Husting Company, Inc. **252 NLRB No. 009**
(unilaterally changing health insurance plans and pension plans for Ees at commencement of their strike, violative)

Meatcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(allowing insurance policy to lapse and changing carriers w/o notifying or bargaining with U)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(unilateral failure to make health and welfare and pension fund contributions and institution of provision for separately funded *medical benefits* program with sick leave and vacation benefits, unlawful)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health

6067-4033-9500—Cont.

plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral increase in insurance benefits, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral change in insurance benefits of previously laid off Ees at time of rehiring)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(violation by institution of new insurance policy by new E which was bound as alter ego to contract of preexisting corporation)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(violation where E unilaterally instituted new policy that made Ees not eligible for insurance until they had been employed for two months and required thereafter to share cost of their insurance)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(U's condonation of E's unilateral implementation of new insurance plan *wipes the slate clean*; Bd's order which required E to c/d from unilaterally changing terms of agreement reversed since there was no ULP upon which to base charge)

6067-4033-9700 Safety

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral contribution to purchase of safety shoes, unlawful)

6067-4044 Unilateral change in tenure or seniority (See also 530-6050-2500)

6067-4044-2500 Recall

Allen Materials, Inc. Debtor-In-Possession **252 NLRB No. 157**
(E making good-faith attempt to apply seniority provision of contract in recall and in fact achieving substantial compliance with such provision in effectuating recall, lawful)

6067-4044-4000 Discharge

P. J. Gear & Sons, Inc. **252 NLRB No. 028**
(utilizing non-U subcontractors for carpentry work in violation of contract, discharging and failing to recall all bargaining unit Ees, and assigning their work to nonbargaining unit Ees w/o negotiating with U violative)

Atlan Inc. **JD-890-79**
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

6067-4044-5000 Layoff

Hillcrest Furniture Manufacturing Co., Inc. **253 NLRB No. 009**

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(unilaterally laying Ees off, violative, where, notwithstanding U's knowledge that one Ee was to be laid off, U had no notice of extent of layoff nor sufficient notice to obligate it to request bargaining prior to effective date of layoff)

Tylertown Wood Products **251 NLRB No. 048**
(unilateral layoff of Ees, not unlawful, where due to unanticipated breakdown of plant machine, E could not inform U it anticipated laying off Ees; E laid off Ees incrementally and it could not be expected that E would inform U each time small number of Ees were laid off; parties discussed effects of layoffs on Ees throughout period of their occurrence; E bargained in good faith from beginning; and it informed newspaper of situation to dispel any rumors linking layoffs to U activity or election results)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral layoffs in two divisions, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral layoff, unlawful)

6067-4044-6700 Seniority

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(unilaterally altering seniority rights of Ees on layoff status by bridging their seniority if they remained on layoff status less than three and one half months, violative)

Westwood Import Company, Inc. **251 NLRB No. 162**
(violation, where successor E, who had hired all but two of predecessor's Ees and was obligated to bargain, unilaterally raised wages of some Ees, and cancelled all accrued seniority, sick leave and vacation rights, and reduced number of paid holidays)

The Baughman Company **248 NLRB No. 186**
(unilateral elimination of seniority as basis for scheduling vacation, unlawful)

6067-4044-7500 Reinstatement rights of economic strikers

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(where U offered to accept E's last offer in order to obtain reinstatement of terminated economic strikers, E's refusal to discuss offer and status of strikers unlawful)

6067-4055 Unilateral change in working conditions (See also 530-6050-3300)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilaterally soliciting Ees to adjust their greivances for purpose of dissuading Ees from joining, assisting, or supporting U, unlawful)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

6067-4055-1000 Dress code

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

6067-4055-1500 Cleanup time

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held violative of Section 8(a)(5) of Act, since it was clearly unilateral change in terms or condition of employment previously fixed by E and made at time when E was obliged to deal with U notwithstanding initiation of and withdrawal of clean up time done w/o any knowledge of management other than their immediate low level supervisors)

6067-4055-2000 Production quota

Tenneco Chemicals, Inc. **249 NLRB No. 171**
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

6067-4055-2500 Use of rest rooms

Production Plated Plastics, Inc. **247 NLRB No. 076**
(institution in pro-U department of new restroom use policy requiring Ees to sign out in order to use restroom and providing disciplinary action if Ees signed out more than five times each week, violative, where Ees previously merely obtained permission from supervisors)

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rule forbidding leaving to go to restroom w/o permission)

6067-4055-2600 Use of bulletin boards

Hedison Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from posting U-related or U literature on E's bulletin boards, and threatening Ees with discipline for violating rule, unlawful)

6067-4055-3000 Hours worked

Bay Medical Center, Inc. **252 NLRB No. 159**
(E's unilateral reduction in hours upon transfer of Ees to new facility, notwithstanding U's repeated requests to bargain over issue, unlawful)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime,

6067-4055-3000—Cont.

not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(promulgation of regulation concerning flex-time, w/o consulting with U, unlawful, notwithstanding contention that action did not establish new work rules but merely reiterated existing rules, where prior thereto local autonomy was regularly exercised between Ee and supervisors regarding working hours, and freezing hours w/i certain time limits deprived Ees of right to make individual adjustments of hours with their supervisors)

The Baughman Company **248 NLRB No. 186**
(unilateral increase in length of workday and workweek, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral reduction in hours, unlawful)

6067-4055-3300 Break periods

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rule forbidding leaving to go to restroom w/o permission)

6067-4055-3500 Assignment of work

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

6067-4055-3700 Job classification

Han-Dee Pak, Inc. **253 NLRB No. 126**
(in supplemental decision Bd found unilateral changes in job classifications and rates of pay for unit Ees after conduct of R election, but *prior* to determination of outcome of election won by U, violative, since E acted at its peril in making such changes pending resolution of objections)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(unilateral changes in classification and wage progressions, unlawful)

Atlanta Baking Company, Inc. **JD-288-80**
(unilateral elimination of supervisory job classification, unlawful)

6067-4055-3800 Transfer

Universal Security Instruments, Inc. **250 NLRB No. 092**
(E violated Act by making job transfer offers to its new plant to Ees w/o bargaining with U)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(violation where E unilaterally announced and implemented new policy restricting use of transfer pool system; Ees previously had been able to downgrade themselves to lesser-paid, less demanding job classifications)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilaterally formulating and implementing new terms and conditions for possible transfer to other departments of Ees selected for layoff, unlawful)

6067-4055-4000 Working rules or schedules

Bay Medical Center, Inc. **252 NLRB No. 159**
(E's unilateral reduction in hours upon transfer of Ees to new facility, notwithstanding U's repeated requests to bargain over issue, unlawful)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where a week after U won election and before U's vitory was certified, E changed Ees' work hours and lunch period w/o consulting with U)

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rules prohibiting rotation of onerous and demanding tasks)

6067-4055-4200 Removing work from unit

Newspaper Printing Corporation **250 NLRB No. 132**
(unilateral removal of advertisement typesetting work from *composing room* to *job shop*, violative, since this work was customarily performed by *composing room* Ees)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Atlan Inc. **JD-890-79**
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

6067-4055-4300 Job requirements

Charmer Industries, Inc. **250 NLRB No. 031**
(Es' unilateral change in procedures for collecting payments from customers, whereby salesmen replaced delivery drivers in making c.o.d. collections, unlawful, since procedure resulted in substantial additional duties and burdens for salesmen and were not a matter of management prerogative; inadequacy of alternative methods to direct collection exposed salesmen to considerable pressures which forced them to begin collecting payments themselves and, although Es did not directly pressure salesmen to make collections, they knowingly utilized force of circumstances to control salesmens' conduct)

Tenneco Chemicals, Inc. **249 NLRB No. 171**
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

6067-4055-4500 Personal conversation

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rule prohibiting talking while working)

6067-4055-4600 Movement around workplace

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(E's issuance of directive forbidding attorney Ees to be present in area during specified hours when negotiations were in progress with Ees in another unit, unlawful, where E failed to notify U representing attorney Ees of proposed change and failed to discuss it with U)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(E's reprimanding of attorney Ee for violating new work rule, herein found unlawful unilateral change, whereby attorneys were forbidden from being present in area where negotiations with Ees in another unit were in progress, unlawful)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from visiting fellow Ees in other departments during lunch and break periods, and threatening Ees with discipline for violating rule, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral circumscription of Ee's representational function by imposition of restrictions as to his movement in the plant, unlawful)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(where Bd issued bargaining order and ct set it aside, remanding to Bd for further proceedings and Bd reinstated bargaining order, ct affirmed Bd, E's institution of new plant rules while bargaining order set aside violative as Bd may make bargaining order retroactive to date U achieved majority status)

6067-4055-5000 Rules governing absenteeism and tardiness

Latex Industries, Inc. **252 NLRB No. 122**

6067-4055-5000—Cont.

Merillat Industries, Inc. **252 NLRB No. 114**
(E's unilateral adoption of more stringent rules on absenteeism, not unlawful notwithstanding facts that rules were mandatory subject of bargaining, E did not offer to bargain with U about them, and U did not contractually waive its rights to bargain about them, where prior to E's adoption of new rules, U president was advised of nature of rules and then proposed change that was accepted by E, one week prior to rules' implementation, all stewards were given copies of rules, at no time did U request bargaining, and did not object in any manner to implementation of new rules until 4 months after their adoption)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(one demand for doctor's excuse, not unlawful where demand does not constitute policy change affecting Ees in general; rather affected only one Ee; was E's response to unique situation where Ee out for first 3 days of hunting season and E felt Ee was supporting effort to put him out of business)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(new requirement of doctor's slips for absences due to illness)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unilateral reduction in length of grace period for lateness and disciplining Ee because her late arrival was outside protection of more stringent grace period but w/i original grace period guideline, violative)

Wellman Industries, Inc. **248 NLRB No. 029**
(discharge for violating unilaterally and unlawfully imposed on-call rule, unlawful)

Lever Brothers Company **JD-301-80**
(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation by unilateral modification of Ee absence-counseling system which deprived Ee of opportunity to seek U representation in session which could result in discipline)

6067-4055-6000 Lunch period

Larsen Supply Co., Inc. **251 NLRB No. 175**
(E violated Act where prior to election which U won, Ees were allowed to take their lunch breaks whenevers it was convienent but afterwards required them to take it at specified time in rataliation for U vote and w/o E bargaining with U)

Newspaper Printing Corporation **JD-203-80**
(violation where E unilaterally instituted rule forbidding previous practice of eating and drinking at work stations)

6067-4055-6300 Physical examinations

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(one demand for doctor's excuse, not unlawful where demand does not constitute policy change affecting Ees in general; rather affected only one Ee; was E's response to unique situation where Ee out for first 3 days of hunting season and E felt Ee was supporting effort to put him out of business)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

6067-4055-6500 Medical services

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally instituting new health and welfare plan covering unit Ees, violative)

6067-4055-7000 Vending machines and cafeteria services

Henry Vogt Machine Company **251 NLRB No. 040**
(unilateral elimination of privilege of using subsidized cafeteria by laboratory Ees, unlawful; E announced its intention to alter status quo by barring Ees from cafeteria just 2 days before contract was presented to Ees for ratification)

6067-4055-7500 Privileges

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's unilateral rescission of Ees' credit card privileges, unlawful, since action constituted material change affecting working conditions inasmuch as Ees will be forced to use their own money rather than E's, and will be forced to wait up to a week or more for reimbursement)

Newspaper Printing Corporation **JD-203-80**
(violation where E unilaterally instituted rule forbidding previous practice of eating and drinking at work stations)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6067-4055-8000 Telephones, radios, etc.

Hedison Manufacturing Company **249 NLRB No. 096**
(unilaterally prohibiting use of radios and pay telephones during working hours, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral circumscription of U representative by restricting his access to telephone, unlawful)

6067-4055-8500 Disciplinary system

Latex Industries, Inc. **252 NLRB No. 122**

Pease Company **251 NLRB No. 080**
(E's reliance on tentative agreements as justification for imposition of new disciplinary program with respect to overtime was misplaced, where both parties understood that tentative agreements were subject to change until complete agreement was reached)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation by unilateral modification of Ee absence-counseling system which deprived Ee of opportunity to seek U representation in session which could result in discipline)

6067-4055-8900 Overtime

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Pease Company **251 NLRB No. 080**
(unilateral implementation of new disciplinary program with respect to overtime, unlawful, where mandatory overtime was never agreed to by U, and E's reliance on tentative agreement that Ees were expected to work overtime did not constitute bining agreement on mandatory overtime by every Ee)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral change from voluntary to mandatory overtime, unlawful)

Mahler Sales Co., Inc. **JD-(SF)-312-79**
(no violation found where E unilaterally changed Ees overtime policy at time when E had no obligation to bargain with U since U had lost election based on challenged ballot which was only later counted in favor of U)

6067-4055-9500 Imposition of fines or other financial liability

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(docking Ee for time he missed from work, not unlawful, since E has right to dock Ee for such reason, and evidence herein fell short of establishing that E was thereby unilaterally changing a generally applicable term or condition of employment)

6067-4066 Unilateral change in grievance and dispute resolving procedures (See also 530-6050- 4100)

Paramount Potato Chip Company, Inc. **252 NLRB No. 117**
(E's refusal to arbitrate grievances and post seniority list violative where both were provisions contained in collective bargaining agreement)

Pease Company **251 NLRB No. 080**
(E's unilateral alteration of grievance procedure established under expired contract, unlawful, where E arrogated to itself sole authority in deciding what subject was grievable and reserved to itself final decision on merits of any grievance it deigned to consider)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(refusal to process grievances as provided in contract regarding layoffs, discharges, and or refusal to recall, refusal to checkoff U dues, and unilateral change in insurance benefits)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's letter, 4 days after U certified, unambiguously ending application of grievance-arbitration procedures to unit Ees in accordance with procedures set forth in Ee handbook held violative, since E did not offer to, and in fact did not, bargain with U about excluding unit Ees from coverage of grievance-arbitration procedure)

Long Manufacturing, N.C., Inc. **JD-453-80**

6067-4066—Cont.

(E's unilateral changes in established past practices associated with grievance procedures which it enforced with terminations and suspensions in retaliations for U's treatment of time limit on grievances and for radical increase in grievances filed, unlawful)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. **JD-261-80**
(refusal to process grievances)

Newspaper Printing Corporation **JD-203-80**
(*refusal to arbitrate not per se violation of Section 8(a)(5); however where refusal to arbitrate, like refusal to comply with any contract provision, evidences intention to violate entire contractual undertaking and is part and parcel of unlawful scheme to repudiate bargaining obligation then refusal to arbitrate unlawful; in such circumstances Bd will order remedy even though U might also have remedy under Section 301 of Act*)

Newspaper Printing Corporation **JD-203-80**
(E's refusal to arbitrate or even submit to third step of grievance procedure involving whether E voluntarily quit or was discharged, unlawful; notwithstanding U might also have Section 301 remedy; nor was deferral to arbitration appropriate)

6067-4077 Unilateral change in union-security and checkoff (See also 530-6050-5000)

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(any failure by E-member of multi-E association, in unlawfully refusing to sign and abide by terms of contract negotiated between association and U, to deduct checkoff dues of Ees who had authorized such deduction, violative)

Peerless Roofing Co., Ltd. **247 NLRB No. 072**
(E's failure to deduct U dues and transmit dues to U, not unlawful where obligation for such payment was pursuant to U-security and dues-checkoff clauses which did not survive when contract expired)

6067-4088 Unilateral change in hiring policies

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally discontinuing compliance with hiring hall provisions of contract, violative)

6067-4500 Wage and/or employment data

Ledford Construction Company, Inc. **251 NLRB No. 193**
(where U requested details of E's complex wage proposal and E complied by providing U with its proposal containing formula to be used in calculating changes in wage rates and also provided example using hypothetical wage rates it did not violate Act notwithstanding it could not provide actual *dollars and cents*, figures as these were not available at that time)

6067-5000 Disciplinary action to enforce unilateral changes

Hedison Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from visiting fellow Ees in other departments during lunch and break periods, and threatening Ees with discipline for violating rule, unlawful)

Hedison Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from posting U-related or U literature on E's bulletin boards, and threatening Ees with discipline for violating rule, unlawful)

6067-6000 Duty to furnish information

6067-6001 Generally

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(U's bare assertion that it needs information to process a grievance does not automatically oblige E to supply all the information in the manner requested, since duty to supply information turns upon the circumstances of the particular case, and the same may be said for type of disclosure that will satisfy that duty)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

6067-6001-1200 For bargaining is statutory

Westwood Import Company, Inc. **251 NLRB No. 162**

6067-6001-2000 Specificity and/or clarity

Ledford Construction Company, Inc. **251 NLRB No. 193**
(where U requested details of E's complex wage proposal and E complied by providing U with its proposal containing formula to be used in calculating changes in wage rates and also provided example using hypothetical wage rates it did not violate Act notwithstanding it could not provide actual *dollars and cents*, figures as these were not available at that time)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(U's bare assertion that it needs requested information to process grievance does not automatically oblige E to supply all information in manner requested)

6067-6001-3700 Standard for furnishing is relevancy of information to union's role as bargaining agent

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**
(*in determining whether information requested by U is relevant the general approach has been to apply liberal discovery type standard to issue of relevancy in evaluating each case on its facts*)

Westwood Import Company, Inc. **251 NLRB No. 162**
(*in determining whether E is obligated to supply particular information, Bd need only find a probability that desired information is relevant, and that it will be of use to U in carrying out responsibilities, this is discovery type of standard; thus, it allows U access to broad range of potentially useful information for purpose of effectuating bargaining process*)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(*relevancy* in cases should be determined under *discovery-type standard* where cts *of necessity must follow a more liberal standard as to relevancy*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6001-3720 Relevance to bargaining negotiations

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(refusing to furnish U certain payroll records requested by U and necessary to U's performance of its bargaining functions, violative)

Safeway Stores, Inc. **252 NLRB No. 095**
(it is well established that U entitled to such information from E as may be relevant and necessary for performance of its bargaining function *test of U's need for such information is merely showing probability that desired information was relevant, and that would be of use to U in carrying out its statutory duties and responsibilities*)

Safeway Stores, Inc. **252 NLRB No. 095**
(retail store's refusal to furnish reports, studies, documents, and tests on which it based its decision to install electronic scanning checkout equipment, including projected labor costs and savings, productivity, reduced head count, elimination of item price, marking and effect on inventory procedures; unlawful)

Westwood Import Company, Inc. **251 NLRB No. 162**
(*in accessing relevance of requested information concerning bargaining unit wage data is deemed presumptively relevant, while other information not so obviously related to U's bargaining and contract administration responsibilities must be shown to be relevant to bargainable issues, burden of proof is thus different, but ultimate standard of relevance is same in all cases, nonunit data may have even more fundamental relevance than that considered presumptively relevant*)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(refusal to furnish U with requested information concerning Ees' names, classifications, dates of hire, current wage rates, and dates and amounts of last pay increases, unlawful since information was necessary and relevant to negotiations)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(E's refusal to furnish U names and addresses of all unit Ees almost year after U's certification held violative, since they were necessary for U to perform its role as bargaining representative of E's Ees)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

6067-6001-3720—Cont.

Industrial Uniform and Towel Service, Inc. **JD-(NY)-43-80**

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(U bears burden of showing that information it seeks concerning Ees outside bargaining unit is relevant to bargaining issues)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**
(refusal to furnish wage date on non-unit independent editorial correspondents of publishing company who are paid per article or monthly retainer fee rather than per hour, violative as nonunit compensation data was relevant and potentially helpful to Guild in framing unit wage demands)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**
(Bd's use of liberal *discovery-type* standard of relevancy upheld as furthering statutory policy of facilitating meaningful collective-bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6001-3740 Relevance to policing agreement

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**
(E's refusal to furnish U information, including job descriptions and production and sales data, for purpose of settlement of grievance as to whether Ees were performing production work as contended by U, rather than research work, and thus should be included in unit, violative)

Safeway Stores, Inc. **252 NLRB No. 095**
(retail store's refusal to furnish reports, studies, documents, and tests on which it based its decision to install electronic scanning checkout equipment, including projected labor costs and savings, productivity, reduced head count, elimination of item price, marking and effect on inventory procedures; unlawful)

Safeway Stores, Inc. **252 NLRB No. 184**
(no merit found to E's claim in response to U's request for information concerning race, sex and handicapped Ees, that U had failed to satisfy requirement in *Westinghourse Electric Corporation, 239 NLRB 106 (1978)* where information requested related directly to U's representation of all unit Ees, including handicapped Ees, which information was presumptively relevant)

Pullman Building Company **251 NLRB No. 145**

Westwood Import Company, Inc. **251 NLRB No. 162**
(in accessing relevance of requested information concerning bargaining unit wage data is deemed presumptively relevant, while other information not so obviously related to U's bargaining and contract administration responsibilities must be shown to be relevant to bargainable issues, burden of proof is thus different, but ultimate standard of relevance is same in all cases, nonunit data may have even more fundamental relevance than that considered presumptively relevant)

Alenco, A Division of Redman Building Products, Inc. **251 NLRB No. 067**
(E's refusal to furnish U with requested wage information which involved matter of claimed unilateral reduction of pay rates of certain Ees, violative)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E's failure to furnish information regarding layoffs and insurance coverage, unlawful, since required for administering bargaining agreement and processing grievances)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(violation by refusal of one of two related companies and of individual who was found their alter ego to supply trustees of U's fringe benefit funds with requested information necessary to audit funds' administration and required to be supplied under contract)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(violation by refusal of one of two related companies and of individual who was found their alter ego to supply trustees of U's fringe benefit funds with requested information necessary to audit funds' administration and required to be supplied under contract)

N.L.R.B. v. Carpenters' District Council of Greater St. Louis, AFL-CIO **622 F.2d 381 (C.A. 8, 1980)**
(E's refusal to furnish U with information necessary to administer provisions of contract, unlawful)

6067-6001-3750 Relevance to processing grievances

Tom's Ford, Inc. **253 NLRB No. 125**
(E's refusal to supply payroll records requested by U to evaluate grievance alleging E had violated contractual provision, unlawful where information was relevant to administration of contract and processing of grievance)

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**
(E's refusal to furnish U information, including job descriptions and production and sales data, for purpose of settlement of grievance as to whether Ees were performing production work as contended by U, rather than research work, and thus should be included in unit, violative)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E's refusal to supply U with copies of Ee's employment application and driving record where Ee was accused of falsifying his driving record on application violative as information necessary for U to adise Ee on whether he should file grievance and fact that Ee had not authorized such release in writing is immaterial)

Lucky Markets, Inc. **251 NLRB No. 118**
(E's refusal to furnish information sought by U pertaining to grievance arising from transfer of Ee pursuant to E's affirmative action program, unlawful, since U is entitled to statistical information (Ees' names, ages, race, sex, marital status) requested by U inasmuch as test for U's need for information concerning terms and conditions of employment is simply a showing of probability that desired information was relevant and would be of use to U in carrying out its statutory duty and responsibilities; however, E was not obligated to divulge statistical age data not applicable to Ee's age)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E's failure to furnish information regarding layoffs and insurance coverage, unlawful, since required for administering bargaining agreement and processing grievances)

Allied Paper, Inc., Division of SCM Corporation **JD-341-80**
(E's refusal to furnish U copy of timebook in order to establish whether grievant was probationary Ee where E had refused to process grievance because of Ee's alleged probationary status, not unlawful, where whether Ee worked on certain day determinative of question, U representative could testify what timebook showed, and testimony would be admissible upon E's failure to furnish timebook; further, Ee himself could testify as to his whereabouts on day in question)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(U's bare assertion that it needs requested information to process grievance does not automatically oblige E to supply all information in manner requested)

N.L.R.B. v. Safeway Stores, Inc. **622F.2d 425 (C.A. 9, 1980)**
(E's refusal to furnish U with records pertaining to Ee production levels violative where U requested information to help it process grievances Ees filed over their being transferred to less desirable positions because they did not satisfy new production requirements)

6067-6001-3760 Wage and related information presumptively relevant

Tom's Ford, Inc. **253 NLRB No. 125**
(refusal to furnish names, addresses, job classifications and pay rates of unit Ees requested for purposes of contract administration, unlawful since that information was presumptively relevant)

Westwood Import Company, Inc. **251 NLRB No. 162**

Westwood Import Company, Inc. **251 NLRB No. 162**

Living and Learning Centers, Inc. **251 NLRB No. 041**
(U is not required to demonstrate exact relevance of such information unless E has submitted evidence to rebut presumption)

Jaggars-Chiles-Stovall, Inc. **249 NLRB No. 108**
(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

6067-6001-3770 Names and addresses of unit employees presumptively relevant

Tom's Ford, Inc **253 NLRB No. 125**
(refusal to furnish names, addresses, job classifications and pay rates of unit Ees requested for purposes of contract administration, unlawful since that information was presumptively relevant)

Hecla Mining Company **248 NLRB No. 182**
(where furnishing list of unit Ees names places no unreasonable burden on E, refusal to furnish even w/o showing of need is violative)

6067-6001-3780 Relevancy of other data must be demonstrated

Tom's Ford, Inc. **253 NLRB No. 125**
(refusal to furnish unit Ees' social security nembers requested for purposes of contract administration, not unlawful since relevance was not shown)

6067-6001-3780—Cont.

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**

(*where request is for information concerning Ees outside bargaining unit, U must show requested information is relevant to bargainable issues*)

Westwood Import Company, Inc. **251 NLRB No. 162**

(*in accessing relevance of requested information concerning bargaining unit wage data is deemed presumptively relevant, while other information not so obviously related to U's bargaining and contract administration responsibilities must be shown to be relevant to bargainable issues, burden of proof is thus different, but ultimate standard of relevance is same in all cases, nonunit data may have even more fundamental relevance than that considered presumptively relevant*)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**

(U's bare assertion that it needs requested information to process grievance does not automatically oblige E to supply all information in manner requested)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**

(E not required to supply requested information to U concerning *cross-trained* Ees of newspaper publisher, since presumption of *relevancy* with respect to information sought was rebutted by E and U gave no indication of how information might be relevant either contemporaneously with its request or on face of request)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**

(requirement of showing necessity as distinct element of relevance where information sought on nonunit personnel, rejected)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**

(burden of showing relevancy to bargainable issue as to nonunit information on U)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6001-5600 Good faith of request

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**

(evidence of prior *use* or *misuse* of information requested of E by U is quite relevant in determining whether E was bargaining in good faith)

6067-6001-5650 Misuse of information

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**

(evidence of prior *use* or *misuse* of information requested of E by U is quite relevant in determining whether E was bargaining in good faith)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**

(prior harassment of Ees and their legitimate fear of harassment justified E's subsequent refusal to provide U payroll information on replacement workers or names and addresses of unit Ees)

6067-6001-6200 Good faith of request not refuted where any purpose is relevant

Westwood Import Company, Inc. **251 NLRB No. 162**

(fact that U's request to purported successor E regarding sale of business encompassed information which E was not legally obligated to provide did not automatically excuse E from complying with request to extent that it also encompassed information which it would be required to provide if it were sole object of demand)

6067-6033 Form and circumstances in which information supplied

6067-6033-2500 Adequacy

Safeway Stores, Inc. **252 NLRB No. 095**

(E's refusal to supply U information relevant and necessary for bargaining prior to meeting, unlawful, since *merely meeting and conferring w/o prior exchange of requested data does not meet requirements imposed on E under Section 8(a)(5) of Act*)

Johns-Manville Sales Corporation **252 NLRB No. 056**

(if E does not possess sufficient medical test data to satisfy U's needs, good faith discussions by parties should enable parties to agree to method of production which would permit E to present requested medical test data in clear and understandable form)

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**

(refusal to provide U with photocopies of requested documents necessary to process five grievances violative where, although E would rather furnish the information by reading to note-takers or permitting U to hand-copy documents, photocopying procedure would have been much less costly to E and U, and would have given U greater assurance of accuracy and completeness of information furnished)

6067-6033-5000 Oral information insufficient

Safeway Stores, Inc. **252 NLRB No. 095**

(E's refusal to supply U information relevant and necessary for bargaining prior to meeting, unlawful, since *merely meeting and conferring w/o prior exchange of requested data does not meet requirements imposed on E under Section 8(a)(5) of Act*)

6067-6033-8800 Delay in furnishing information

Safeway Stores, Inc. **252 NLRB No. 095**

(E's refusal to supply U information relevant and necessary for bargaining prior to meeting, unlawful, since *merely meeting and conferring w/o prior exchange of requested data does not meet requirements imposed on E under Section 8(a)(5) of Act*)

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(unreasonable delay in furnishing information and documents requested by U in course of contract negotiations violative)

Aeolian Corporation, Ivers & Pond Piano Division **247 NLRB No. 170**

(violation where, although E's attorney indicated that he would give information concerning time study and production on request and E admitted to U that such information was available on 2 or 3 days' notice, E did not order information to be compiled until 3 weeks after U first asked for it, and U did not obtain the information until more than a month after asking for it)

6067-6050 Availability of Information Sought

Safeway Stores, Inc. **252 NLRB No. 184**

(refusal to supply U requested information on handicapped persons held violative where E had insufficient justification to avoid its bargaining obligations; information sought, in instant case, was not type which would have potential of compromising privacy rights of individual Ees, nor was expense and inconvenience involved in furnishing information so great as to justify E's refusal)

Bel-Air Bowl, Inc. **247 NLRB No. 003**

(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

6067-6058 Cost of Supplying Information

Safeway Stores, Inc. **252 NLRB No. 184**

(if production of information ordered involved substantial costs, parties may bargain over allocation of those costs)

Safeway Stores, Inc. **252 NLRB No. 184**

(refusal to supply U requested information on handicapped persons held violative where E had insufficient justification to avoid its bargaining obligations; information sought, in instant case, was not type which would have potential of compromising privacy rights of individual Ees, nor was expense and inconvenience involved in furnishing information so great as to justify E's refusal)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**

(on ct remand, Bd reaffirmed its original decision that E did not violate Sec 8(a)(5) when it conditioned its agreement to provide Us with certain company records upon Us' payment of costs incurred in supplying requested documents)

6067-6067 Nature of information to be supplied

6067-6067-2000 Financial data substantiating claim of economic hardship

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6067-2500 Financial data to justify modification of contract

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**

(piecework rates and how they were arrived at, moreover, belatedly supplying information does not fulfill bargaining obligation)

6067-6067-3000 Data concerning contracted out work

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

(E's failure to furnish information regarding whether it had subcontracted unit work, to whom, for how long, and any agreement regarding subcontracting, unlawful, since subcontracting relevant to negotiations and to whether jobs of ULP striker had been lawfully abolished)

6067-6067-3300 Documents in personnel file

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E's refusal to supply U with copies of Ee's employment application and driving record where Ee was accused of falsifying his driving record on application violative as information necessary for U to adise Ee on whether he should file grievance and fact that Ee had not authorized such release in writing is immaterial)

6067-6067-3800 Incentive program

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(piecework rates and how they were arrived at, moreover, belatedly supplying information does not fulfill bargaining obligation)

6067-6067-4000 Production and sales data

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**
(E's refusal to furnish U information, including job descriptions and production and sales data, for purpose of settlement of grievance as to whether Ees were performing production work as contended by U, rather than research work, and thus should be included in unit, violative)

Aeolian Corporation, Ivers & Pond Piano Division **247 NLRB No. 170**
(information as to production and job assignment, product specifications and engineering drawings, and time study for named department)

N.L.R.B. v. Safeway Stores, Inc. **622F.2d 425 (C.A. 9, 1980)**
(E's refusal to furnish U with records pertaining to Ee production levels violative where U requested information to help it process grievances Ees filed over their being transferred to less desirable positions because they did not satisfy new production requirements)

6067-6067-4500 Wage and/or employment data

Tom's Ford, Inc. **253 NLRB No. 125**
(E's refusal to supply payroll records requested by U to evaluate grievance alleging E had violated contractual provision, unlawful where information was relevant to administration of contract and processing of grievance)

Tom's Ford, Inc. **253 NLRB No. 125**
(refusal to furnish names, addresses, job classifications and pay rates of unit Ees requested for purposes of contract administration, unlawful since that information was presumptively relevant)

Tom's Ford, Inc. **253 NLRB No. 125**
(refusal to furnish unit Ees' social security nembers requested for purposes of contract administration, not unlawful since relevance was not shown)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(refusing to furnish U certain payroll records requested by U and necessary to U's performance of its bargaining functions, violative)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(refusal to grant U's request to review E's payroll records, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(refusal to furnish U with requested information concerning Ees' names, classifications, dates of hire, current wage rates, and dates and amounts of last pay increases, unlawful since information was necessary and relevant to negotiations)

Jaggars-Chiles-Stovall, Inc. **249 NLRB No. 108**
(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(refusal to produce, at U's request, record of number of hours worked by unit Ees during stated contract year, violative where E defended its refusal on ground that U's bargaining contract had expired)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

The Workshop, Inc. **JD-230-80**
(refusal to supply names and addresses and hiring dates of Ees relevant to and necessary for negotiations, unlawful)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(E's refusal to furnish wage data concerning nonunit Ees, unlawful, where at date of hearing, E was first formally put on notice of ULP charge as to contract negotiation need for requested data, E did not agree at that time to furnish information, nor did it seek to postpone hearing or claim inadequate advance notice of this basis of charge, but instead E insisted it had been under no obligation to furnish data prior to hearing)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**
(refusal to furnish wage date on non-unit independent editorial correspondents of publishing company who are paid per article or monthly retainer fee rather than per hour, violative as nonunit compensation data was relevant and potentially helpful to Guild in framing unit wage demands)

K Mart Corporation v. N.L.R.B. **626 F.2d 704 (C.A. 9, 1980)**
(E's refusal to furnish information as to wage increases in its other distribution centers to substantiate claim that its policy was to set wages in accordance with community standards, violative, (same result if set according to *prevailing wages*) as information is relevant)

6067-6067-5400 Insurance plans

Eastern Maine Medical Center **253 NLRB No. 024**
(E's refusal to furnish insurance information requested by U, unlawful, since providing such information is essential bargaining requirement, and there is no evidence that E thereafter provided the requested information)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(enforcement granted on Bd's determination that E's refusal to furnish U with requested copy of new insurance program, unlawful, where there was continuing duty to bargain)

6067-6067-5800 Data concerning production scheduling

Southwestern Bell Telephone Company **251 NLRB No. 061**

6067-6067-5900 Performance reviews

Pease Company **251 NLRB No. 080**
(E's refusal to furnish, at U's request, performance review records with respect to recently granted pay increases, unlawful, where records were necessary for U to police E's application of E's new pay system, and they were relevant to bargaining on wages on which there had as yet been no agreement; nor was there any evidence that U, expressly and unequivocally, or even by implication, waived its right to the information)

6067-6067-6000 Specific individual wage and/or employment data

Hillcrest Furniture Manufacturing Co., Inc. **253 NLRB No. 009**

Yet Wah Restaurant **251 NLRB No. 010**
(refusal to furnish U with requested names, dates of hire, termination dates, social security numbers, work classifications and wages for all Ees employed since November 1978, unlawful)

Jaggars-Chiles-Stovall, Inc. **249 NLRB No. 108**
(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

6067-6067-6033 Confidential nature of information

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**
(though U's interest in information may be relevant, disclosure may be conditioned to accommodate E's interest in confidentiality so that less than complete disclosure justified)

6067-6067-6400 Equal employment and/or affirmative action data

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply equal employment data, unlawful)

6067-6067-6500 Attendance records of employees

Pease Company **251 NLRB No. 080**

Allied Paper, Inc., Division of SCM Corporation **JD-341-80**
(E's refusal to furnish U copy of timebook in order to establish whether grievant was probationary Ee where E had refused to process grievance because of Ee's alleged probationary status, not unlawful, where whether Ee worked on certain day determinative of question, U representative could testify what timebook showed, and testimony would be admissible upon E's failure to furnish timebook; further, Ee himself could testify as to his whereabouts on day in question)

6067-6067-7000 Correlated wage survey data

6067-6067-7050 Confidential nature of information

Safeway Stores, Inc. **252 NLRB No. 184**
(refusal to supply U requested information on handicapped persons held violative where E had insufficient justification to avoid its bargaining obligations; information sought, in instant case, was not type which would have potential of compromising privacy rights of individual Ees, nor was expense and inconvenience involved in furnishing information so great as to justify E's refusal)

6067-6067-7300 Data concerning employee benefits

Wellman Industries, Inc. **248 NLRB No. 029**

6067-6067-7300—Cont.

(refusal to supply forms related to E's insurance and pension programs, unlawful)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(where U requested E to provide it with terms and conditions of employment, including benefits received, E's refusal to include in the list four benefits, namely Ee first quarter wage increase, two savings funds, and Christmas bonus that it had unilaterally discontinued, violative)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(refusal to supply information regarding payments to fringe benefit funds required by contract, unlawful)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(refusal to supply information regarding payments to fringe benefit funds required by contract, unlawful)

6067-6067-7400 Data concerning employment aptitude tests

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(Bd abused its discretion in ordering E to turn over, in compliance with U's request, employment aptitude tests and ans sheets directly to U, where Bd cited no principle of national labor policy to warrant remedy that would unnecessarily disserve E's concern for test secrecy, Bd's order did not adequately protect secrecy of tests, there is substantial doubt whether U would be subject to contempt citation were it to ignore Bd's restrictions, other effective Bd sanctions are similarly problematic, and U would not be accountable in either contempt or ULP proceedings for inadvertent leaks)

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(E's willingness to disclose, at U's request, scores of employment aptitude tests upon receipt of consents from examinees satisfied E's statutory obligation; ct declined to adopt rule that U's interests in arguably relevant information always predominate over all other interests, no matter how legitimate; in view of sensitive nature of information, minimal burden E's offer placed on U, and absence of evidence that E acted to frustrate U in discharge of its statutory responsibilities, ct rejected Bd's conclusion that E violated Act)

6067-6067-7500 Pension plan and funding

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

6067-6067-7600 Health and safety matters

Johns-Manville Sales Corporation **252 NLRB No. 056**
(U's request for names of Ees whose medical files E had *red-tagged* because its doctors had diagnosed them as being partially disabled by lung disease, properly refused by E where, although the information may be relevant because contract awarded them additional seniority rights, U's showing of need did not clearly outweigh confidentiality claimed by E)

Johns-Manville Sales Corporation **252 NLRB No. 056**
(E's refusal to provide U with statistical data on sputum cytology, X-rays, blood tests, pulmonary function tests, and listing of diseases which cause Ees' disability retirements, which could be considered occupational in nature, unlawful)

6067-6067-7900 Statistical data (race, sex, etc.)

Safeway Stores, Inc. **252 NLRB No. 184**
(no merit found to E's claim in response to U's request for information concerning race, sex and handicapped Ees, that U had failed to satisfy requirement in *Westinghourse Electric Corporation, 239 NLRB 106 (1978)* where information requested related directly to U's representation of all unit Ees, including handicapped Ees, which information was presumptively relevant)

Lucky Markets, Inc. **251 NLRB No. 118**
(E's refusal to furnish information sought by U pertaining to grievance arising from transfer of Ee pursuant to E's affirmative action program, unlawful, since U is entitled to statistical information (Ees' names, ages, race, sex, marital status) requested by U inasmuch as test for U's need for information concerning terms and conditions of employment is simply a showing of probability that desired information was relevant and would be of use to U in carrying out its statutory duty and responsibilities; however, E was not obligated to divulge statistical age data not applicable to Ee's age)

6067-6067-8000 Names and addresses of employees and former employees

Tom's Ford, Inc. **253 NLRB No. 125**
(refusal to furnish names, addresses, job classifications and pay rates of unit Ees requested for purposes of contract administration, unlawful since that information was presumptively relevant)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. **252 NLRB No. 013**

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(E's refusal to furnish U names and addresses of all unit Ees almost year after U's certification held violative, since they were necessary for U to perform its role as bargaining representative of E's Ees)

Hecla Mining Company **248 NLRB No. 182**
(where furnishing list of unit Ees names places no unreasonable burden on E, refusal to furnish even w/o showing of need is violative)

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply list of Ees affected by E's unilateral actions in earlier case, unlawful)

The Workshop, Inc. **JD-230-80**
(refusal to supply names and addresses and hiring dates of Ees relevant to and necessary for negotiations, unlawful)

6067-6067-8400 Time study data

Aeolian Corporation, Ivers & Pond Piano Division **247 NLRB No. 170**
(information as to production and job assignment, product specifications and engineering drawings, and time study for named department)

6067-6067-8500 Job descriptions

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**
(E's refusal to furnish U information, including job descriptions and production and sales data, for purpose of settlement of grievance as to whether Ees were performing production work as contended by U, rather than research work, and thus should be included in unit, violative)

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply job descriptions, unlawful)

6067-6067-8900 Information concerning laid-off employees

S & W Motor Lines, Inc. v. N.L.R.B. **621 F.2d 598 (C.A. 4, 1980)**
(E's denial of U's request for information as to layoffs of non-unit-members, not unlawful absent showing of U's demonstration to E of its need to know; moreover U's reason advanced in ct for its request reinforced conclusion that it had no need to know)

6067-6067-9000 Seniority Lists

Raines Lincoln-Mercury, Inc. **JD-224-80**
(failure to supply Ees' dates of hire requested by U for seniority list purposes, unlawful)

6067-6067-9600 Changes in working conditions

Safeway Stores, Inc. **252 NLRB No. 095**
(retail store's refusal to furnish reports, studies, documents, and tests on which it based its decision to install electronic scanning checkout equipment, including projected labor costs and savings, productivity, reduced head count, elimination of item price, marking and effect on inventory procedures; unlawful)

6067-6067-9800 Job vacancies

Southwestern Bell Telephone Company **247 NLRB No. 027**
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

6067-6067-9900 Sale of business

Westwood Import Company, Inc. **251 NLRB No. 162**
(purported successor E's refusal to furnish information purtaining to sale of business, unlawful, since whether new owner is successor E and obligated to recognize and bargain with U is relevant to U's duty to represent Ees, notwithstanding U's request for information not limited to that aspect of sale nor was E advised of reasons for request)

6067-7000 Repudiation of contract

United Artists Theatre Circuit, Inc. **253 NLRB No. 078**
(no unlawful repudiation of terms of verbal bargaining agreement, in view of credited testimony that no agreement on issue was reached between the parties)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(repudiation and failure to abide by terms of bargaining agreement between multi-E association and U, violative)

Construction Erectors, Inc. **252 NLRB No. 045**
(repudiating multisite contract, violative, notwithstanding E's contention that it was unenforceable as pre-hire agreement, where, although first contract between E and U fell into category of Sec. 8(f) agreement, at least by time of the contract here in question, U had achieved majority status in stable unit of E's Ees)

Pullman Building Company **251 NLRB No. 145**
(violation, where E refused to abide by state homebuilder-Es' association contract; E's claims that it was not bound because it was operating as developer rather than homebuilder and that it had separate agreement with U, rejected where work was typical homebuilders' work and, as association

member, E had invested exclusive bargaining authourity in association and could not enter into separate agreement)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(E's announcement that it was withdrawing its application to be bound by master labor agreement shortly after renewal thereof and refusal thereafter to abide by provisions of master labor agreement, unlawful)

Land Equipment Inc. **248 NLRB No. 098**
(violation where E failed to pay contractually required wages or make required benefit trust fund contributions in repudiation of U's contract with one of two companies found single E herein since Ees of both companies constituted E-wide unit herein, were found stable complement moving from job to job and majority were found to support U at time of repudiation)

D'Angelo & Khan, Inc. **248 NLRB No. 062**
(where E entered into 8(f) prehire agreement with local when it first worked at jobsite w/i local's jurisdiction, its refusal to apply agreement to Ees at succeeding jobsite held not unlawful, since prehire agreement did not give rise to presumption of local's majority status at original jobsite; furthermore, regardless of local's majority status at original site, provisions of 8(a)(5) do not apply unless U can demonstrate its majority status at succeeding sites, record here showed Local did not have majority support at the succeeding site)

Carbon Specialties, Inc. **JD-510-80**
(failing and refusing to give effect to certain obligations that accrued under contract, such as payment to Ees of wage increases and payment to U of Ee dues under checkoff provisions, violative)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

6083 REQUIREMENTS FOR TERMINATION OR MODIFICATION OF CONTRACTS - 8(d) PROVISO

6083-0100 Generally

6083-0150 Obligation to refrain from termination or modification without notice and bargaining

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(E's belated termination notice and offer to bargain two years after repudiation of contract and unilateral changes, no defense)

6083-0150-5000 Modification of terms without bargaining

Exxon Company, U.S.A. **253 NLRB No. 027**
(8(d) provides that U's failure to discuss E's unilateral modification of contractual terms or conditions of employment is not defense to ULP)

6083-2000 Notice requirements

6083-2001 Generally

W. G. Best Homes Corporation **253 NLRB No. 123**
(*burden of requesting bargaining about a change or proposed change in business operations shifts to U upon notification by E that such change is imminent; although conjecture and rumor are not adequate substitute for a formal notice, notice less than formal may be sufficient where more formal notice would have been futile in view of U's insistence on bargaining through association unit from which E had properly withdrawn and U is not interested in bargaining w[illegible] on individual basis*)

6083-4000 Obligation to meet and confer with other party on proposals

W. G. Best Homes Corporation **253 NLRB No. 123**
(obligation to bargain regarding subcontracting *requires E to notify U involved of proposed subcontracting agreement and give U opportunity to discuss decision and consider alternative proposals; normally, U must be notified of proposed subcontract eliminating unit jobs before execution of agreement, nor is mere statement of general intent to subcontract in future sufficient prior notice where subsequent bargaining occurs in context of fait acompli; where, however, U is given full opportunity to bargain about executory contract, which may be rescinded, proma facie showing of violation because of failure to give U prior notice excused*)

8000 AFFIRMATIVE DEFENSES

8004 SUBSEQUENT PERFORMANCE OF OBLIGATION

Jefferson Electric Co., Inc. **251 NLRB No. 129**
(E's subsequent recognition of U, occuring after its initial, unlawful refusal to bargain, insufficient to withstand *Motion for Summary Judgment*, since Ees' statutory rights had been violated)

8005 DOUBT OF BOARD'S JURISDICTION

Children's Receiving Home of Sacramento **248 NLRB No. 053**
(Bd had properly asserted jurisdiction over children's home where governmental department was connected with home but not joint E with it)

8005-5000 No defense where Board has jurisdiction

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's denial of allegation that it is E engaged in commerce w/i meaning of Act, on ground such allegation states legal conclusion, held w/o merit, where E's admission of facts of commerce in effect admitted both statutory and discretionary jurisdiction of Bd, and E stipulated to jurisdiction in prior R case; moreover, E has presented no newly discovered or previously unavailable evidence or asserted any circumstance which would require Bd to allow relitigation of jurisdiction issue)

8006 BOARD DEFFERENCE TO ARBITRATION

Bay Shipbuilding Corporation **251 NLRB No. 114**
(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since *coverage* which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

8009 DOUBT AS TO UNION'S MAJORITY STATUS (SEE ALSO 530-4080-5000)

8009-0100 Generally

Westwood Import Company, Inc. **251 NLRB No. 162**
(*after the expiration of valid collective bargaining agreement, U enjoys a rebutable presumption that its majority representative status continues; such presumption may be effectively rebutted if E affirmatively establishes either (1) that at time of refusal to recognize U, U in fact no longer enjoyed majority support of unit Ees; or (2) that E's refusal was predicated on good faith doubt based on objective considerations; however, burden of rebutting presumption rests on party who would do so*)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**
(where E proferred defense of good faith doubt of U's majority status, ct held E could reasonably consider pre-10(b) circumstances because *sweetheart* relationship evidenced by unlawful prehire contract entered into by predecessor E sheds light on its commission of independent ULP in assisting U w/i 10(b) period; however, since successor E did not make clear the relationship, if any, between unlawful assistance during 10(b) period and its claim of good faith doubt, ct deemed it best left to Bd, which had not previously considered issue, to consider it in the first instance)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Es' contention that E's good faith belief that U no longer had majority support is all that is required to withdraw recognition, rejected; E's good faith doubt of U's majority status must be reasonable and supported by objective considerations and Bd's determination of whether defense is established will be upheld if supported by substantial evidence on the record)

8009-1100 Good-faith doubt of majority status justifies refusal to recognize

Roza Watch Corp. **249 NLRB No. 036**
(refusal to recognize and bargain with certified U after expiration of contract, violative where E failed to rebut presumption or sustain good faith doubt of U's continued majority support following expiration of contract)

8009-1500 Good-faith doubt of majority status justifies refusal to bargain after certification year

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

8009-2200 Doubt not defense if in fact refusal otherwise motivated

Scott Printing Corporation **249 NLRB No. 134**
(Bd, in affirming its prior D/O, found E and its *alter ego* may not now allege that at time of refusal to bargain, they had good-faith doubt as to U's continuing majority support, since defense was based on events induced by *sham* sale to E's *alter ego*; purpose of sale was to enable E to avoid its duty to bargain with U)

8009-4400 **Filing of representation or decertification petition**

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

8009-5500 **Indicia of bad faith in asserting doubt**

8009-5517 Antiunion conduct

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(withdrawal of recognition from U, violative, where E cannot base good faith doubt of U's majority status upon anti-U petitions or Ees subsequent filing of decertification petition since such Ee defections resulted from E's own misconduct)

8009-5525 Unremedied unfair labor practices

Permanent Label Corporation **248 NLRB No. 021**
(refusal to bargain with U which had majority status and engaging in ULP's which prevented fair election violative)

8009-8800 **Fluctuation in employment does not support asserted doubt**

International Medication Systems, Ltd. **253 NLRB No. 120**

Cain's Generator and Armature Company, Inc. v. N.L.R.B. **628 F.2d 933 (C.A. 6, 1980)**
(enforcement granted where substantial evidence supported Bd's finding that none of factors relied upon by E justified withdrawal or recognition from U; E had relied upon U's alleged loss of majority status where (1) 10 of 23 Ees were new Ees, (2) lack of Ee requests for dues checkoffs--a voluntary action, and (3) several *unidentified* Ees had expressed dissatisfaction with U--, not objective factor in determining majority status)

8009-9400 **Employee lack of interest**

International Medication Systems, Ltd. **253 NLRB No. 120**
(fact, that members of Ees' negotiating committee became disinterested in further participation in contract negotiations does not, alone, establish general Ee disinterest in being represented by U)

Pennco, Inc. **250 NLRB No. 093**
(fact only 42 striking Ees out of unit of 173 sought reinstatement at conclusion of strike not basis for good faith doubt of majority where E had withdrawn recognition from U 10 months prior to start of strike)

8009-9800 **Following withdrawal from multiemployer bargaining unit**

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, hled untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal of recognition from U unlawful, notwithstanding fact that majority of E's Ees withdrew their support from U, since appropriate unit is multi-E association unit)

Cain's Generator and Armature Company, Inc. v. N.L.R.B. **628 F.2d 933 (C.A. 6, 1980)**
(enforcement granted where substantial evidence supported Bd's finding that none of factors relied upon by E justified withdrawal or recognition from U; E had relied upon U's alleged loss of majority status where (1) 10 of 23 Ees were new Ees, (2) lack of Ee requests for dues checkoffs--a voluntary action, and (3) several *unidentified* Ees had expressed dissatisfaction with U--, not objective factor in determining majority status)

8018 DOUBT AS TO APPROPRIATENESS OF UNIT

8018-0100 **Generally**

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1980)**
(ct remanded to Bd for reconsideration of its finding that E violated Act by unilaterally altering job requirements of Ees in light of ct's opinion that Bd had improperly made finding as to inclusion in unit of Ees affected by such unilateral change)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(E's withdrawal of recognition from U assertedly because certified unit was inapproptiate, violative, even if Bd certification was improper; E is deemed to have consented to Bd's unit determination by acquiescing in the unit determination until after ALJ found E guilty of 8(a)(5) violations over two years later, by executing one-year bargaining agreement with U following date when unit was certified, and by subsequently specifically admitting appropriateness of unit in its ans to GC's C)

8018-2500 **Changed circumstances**

8018-2512 Relocated operations

Westwood Import Company, Inc. **251 NLRB No. 162**
(withdrawal of recognition and failure to honor contract at relocated plant 35 miles from old site during period contract served as bar and no qcr present, violative, otherwise, E could unilaterally eliminate or change representative at time when Bd would refuse to allow change; relocation, providing operations and equipment remain substantially same at new location and substantial percentage of Ees (though less than 50) at old plant transfer to new location, has little effect on bargaining obligation)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where E committs ULP by transferring only few Ees to relocated plant, Bd will then examine question of whether majority of unit Ees at new facility would have been comprised of Ees from old facility had it not been for E's unlawful activity)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(where Ees at new plant are accretion to unit at old plant, refusal to extend contract covering old Ees to Ees at new plant violative)

8018-2525 New operation not accretion

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(where E, whose sheet metal workers were represented by U, entered into arrangement with another company by which the latter would hire its own Ees and do bin repair work contracted for by E, E's refusal to apply its U contract to the bin repair Ees not violative absent finding bin repair Ees accretion to sheet metal workers unit)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where relevant considerations are not free from doubt as to whether or not Ees are accretion to existing unit, Bd and cts are in agreement that best way to resolve close question is through election process because accretion doctrine applied restrictively since it deprives Ees of opportunity to express their desires)

A--1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. **250 NLRB No. 034**
(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable waiver* standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(ct held that workers employed by E's newly acquired non-U subsidiary formed a separate bargaining unit from Ees of existing unionized subsidiary, and E's failure to apply existing U contract to non-U subsidiary was not unlawful, even though subsidiaries constituted a single E, where Bd in its discretion found an appropriate unit of non-U Ees separate from those of unionized subsidiary, and it was not ct's duty to determine whether other units would be appropriate inasmuch as Bd's decision was rational, in accord with past precedent, and unit chosen was appropriate)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that fact that subsidiaries comprised a single E necessarily established that single unit of Ees of both subsidiaries was appropriate; a single E determination does not necessarily establish that E-wide unit is appropriate)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that Bd's decision that Ees of both subsidiaries constituted separate units was inconsistent with Bd precedent, where Bd found subsidiaries functioned as substantially separate operations and that two groups of Ees had distinct interests)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that Bd's decision was not in accord with past precedent; cases relied on by U contain factual differences that justify different outcome herein, Bd's decision is supported by its accretion decisions, and ct with its limited scope of review cannot say that Bd's determination is erroneous)

8018-2550 Accretion does not render existing unit inappropriate

Safety Electric Corporation and San Joaquin Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**

8018-2550—Cont.

(Ees of two corporations found to be single E shared same type of skills and duties and should be included in same bargaining unit as accretion to original bargaining unit)

8018-3000 Union merger or affiliation

N.L.R.B. v. Samuel P. Katz, d/b/a American Mailers (Plant #2) **622 F.2d 242 (C.A. 6, 1980)**
(refusal to bargain with local which had merged with incumbent violative, notwithstanding contention of precedurally defective merger vote and no continuity of R; (1) election procedures were adequate in view of timely and adequate election notice and there was absence of evidence of invasion of Ee privacy, prejudice to any Ee, achievement of different outcome by more formal methods or significant effect on E's bargaining obligation, and (2) this ct has not adopted continuity of R as a standard ---- as long as choice of representative has been freely made, Ees' preference should be recognized)

8018-7500 Doubt no defense if in fact unit appropriate

J. C. Penney Company **252 NLRB No. 047**
(E's failure and refusal to recognize U as representative of Ees in new catalog sales department and failure and refusal to apply terms and conditions of existing E-U contract covering unit of floor sales department Ees, violative, where the new catalog sales department was found herein to be accretion to the unit floor sales department Ees)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(contention of E that manufactured garments that appropriate unit should encompass its factory and warehouse Ees rather than be limited to warehouse Ees, rejected, in view of differences in skills, working conditions and wages of Ees)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(violation where E failed to apply contract to all Ees in appropriate unit and failed after contract's expiration to continue to maintain provisions of contract or to bargain for a new contract covering all unit Ees while erroneously insisting that a large number of Ees were not included in unit; although failure to apply existing contract to all unit Ees was not alleged as violation, matter was fully litigated, since it and later violation both turned on question of who was in appropriate unit)

United States Steel Corporation **248 NLRB No. 090**
(violation where E refused to bargain concerning wages and working conditions of students attending E-sponsored school on basis that they were no longer unit members where Bd found that they remained in unit as Ees while in school)

8019 Rival union claim to recognition

Andersen Sand & Gravel Company **JD-655-80**
(E which was engaged in manufacture of prefabricated structual concrete signing contract with Laborers in regard to representation of Ees in new wet concrete operation, unlawful, since E had obligation to bargain with Teamsters where Ees in new operation part of existing unit represented by Teamsters; inasmuch as work was performed in same plant with same tools, basically same wages, under same general supervision and working conditions; nor was operation result of establishment of new division where operation neither physically nor functionally distinct, and E's proposal for new division during bargaining had been withdrawn)

8020 DEMAND FOR BARGAINING IN INAPPROPRIATE UNIT

The Arundel Corporation **252 NLRB No. 059**
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had recognized another U held not unlawful, where Ees sought by U were located substantial distance from other Ees covered by charging U's contract, they had no contact with such Ees, were employed in work situation in which their supervisor had considerable control over day-to-day personnel policies and employment, and they never expressed preference to be recognized by charging U rather than recognized U)

Chester Valley, Inc. **251 NLRB No. 190**
(U's demand held not proper request to bargain where there was substantial deviation between appropriate three-facility unit and demand specifying unit limited to E's two-facility unit, and demand was not cured by U's amendment of its R ptn so as to add third facility; note taken of E's letter to Ees, bearing same date as date of U's addition of third facility to petitioned-for unit, that he would not recognize U w/o an election)

Howard Johnson Company **250 NLRB No. 161**
(E's contention that unit of motel housekeeping Ees was inappropriate because it excluded, among others, front desk clerks, rejected, where case relied on by E is hereby overruled in view of later decisions cited by RD in his D/O directing election which fully supported his determination; *Howard Johnson Co.*, 201 NLRB 376, overruled)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(multi-E association's counterproposal for contract renewal with unwavering demand that lounge musicians be excluded from bargaining unit despite their inclusion for past decade held unlawful withdrawal of recognition; belief that lounge musicians were independent contractors and U's agreement to defer lounge musicians issue does not justify or legitimaze E's withdrawal of recognition)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's contention its refusal to bargain justified as U represented inappropriate unit, rejected, since not clear unit would have been inappropriate absent stipulation; further, E had not raised issue previously and had agreed to E's request for desired exclusion)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**
(where U certified for company-wide unit of P&M Ees employed in predecessor's 7 plants and new E purchases one of these plants, latter E held not successor and its refusal to bargain with certified U not violative, where certification over 2 years old; only 8 of 49 presently employed revealed themselves to be U adherents, 13 had worked for predecessor but did not participate in strike and rest hired by predecessor after strike or new E; no ULPs or U animus by new E, all of which gave rise to good faith doubt of majority status in changed bargaining unit)

8023 NOT BOUND BY MULTIEMPLOYER BARGAINING

8023-0100 Generally

Pullman Building Company **251 NLRB No. 145**
(violation, where E refused to abide by state homebuilder-Es' association contract; E's claims that it was not bound because it was operating as developer rather than homebuilder and that it had separate agreement with U, rejected where work was typical homebuilders' work and, as association member, E had invested exclusive bargaining authourity in association and could not enter into separate agreement)

8023-1200 Never became member

Jefferson Stores, Inc. **253 NLRB No. 048**
(refusal to sign 1978-82 master agreement held not violative where agent who signed memorandum agreement of 1976-79 contract expressly limited contract to one jobsite and, therefore, did not become signatory to master contract and no obligation to sign new agreement; E's compliance with master agreement at additional jobsites does not establish adoption or ratification of agreement for those jobsites)

8023-2500 Withdrawal timely

Schaetzel Trucking, Inc. **250 NLRB No. 044**
(E's withdrawal held timely, inasmuch as it was undisputed that no negotiations had begun for successor to expired multi-E bargaining agreement at time E withdrew from multi-E unit)

8023-6600 Association exceeded its authority

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(E's failure to honor contract executed by E-association of which it was member violative notwithstanding E believed association had no power to bind it to contract with U because it had reserved to itself right to reject contract since such reservation not communicated to U until after contract reached)

8023-6700 Unusual circumstances in untimely withdrawal

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(unusual circumstances consist of either extreme financial pressures or where bargaining unit has been substantially fragmented)

8023-6800 No unit employees employed

Miscellaneous Drivers and Helpers Union, Local No. 610 v. N.L.R.B. **624 F.2d 831 (C.A. 8, 1980)**
(no violation where funeral home operator refused to sign funeral directors association's contract with U representing funeral vehicle drivers, since funeral home operator, though member of association, did not employ drivers but contracted with other Es for drivers' services notwithstanding he had signed contract in past)

8023-7500 Union's acquiescence in untimely withdrawal

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(consent of U not found where: U did not explicitly object to E's announced withdrawal, continued to negotiate with E-association representatives and 3) did not formally protest attempted withdrawal until 2 weeks after unit-wide agreement reached, as U under no duty to protest in formal manner, consent involves affirmative action *antithetical* to claim of no withdrawal)

8023-9700 Effect of Section 10(b) 6-month limitation

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authorita-

8023-9700—Cont.

tive precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**

(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from goup bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

8027 LOSS OF MAJORITY (SEE ALSO 530-4080-5000)

8027-0400 No defense where raised after commission of ULP

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

Martinsburg Concrete Products Co. **248 NLRB No. 172**

(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

8027-0900 Employee turnover

International Medication Systems, Ltd. **253 NLRB No. 120**

Taylor Hospital **249 NLRB No. 031**

(Ee turnover, no defense where no evidence was adduced to rebut presumption that new Ees would support U in same ratio as Ees they replaced)

Glomac Plastics, Inc. v. N.L.R.B. **600 F.2d 3 (C.A. 2, 1979)**

(ct entered judgment enforcing bargaining order where ct had remanded cause to Bd for reconsideration of propriety of bargaining order and, pursuant to that remand, Bd had reassessed remedial order and, notwithstanding its assumption of the accuracy of the E's principal claims of substantial Ee turnover in unit and/or abandonment of unit by U, nevertheless entered supplemental order affirming that the original relief granted remained appropriate)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**

(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

8027-1000 Packing the unit

Suburban Ford, Inc. **248 NLRB No. 051**

(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

8027-3200 No election held

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

8027-3600 Not defense where employer is responsible for loss

Bel-Air Bowl, Inc. **247 NLRB No. 003**

(inducement of Ees to abandon support for U, unlawful)

8027-5400 Plant relocation

Westwood Import Company, Inc. **251 NLRB No. 162**

(withdrawal of recognition and failure to honor contract at relocated plant 35 miles from old site during period contract served as bar and no qcr present, violative, otherwise, E could unilaterally eliminate or change representative at time when Bd would refuse to allow change; relocation, providing operations and equipment remain substantially same at new location and substantial percentage of Ees (though less than 50) at old plant transfer to new location, has little effect on bargaining obligation)

Westwood Import Company, Inc. **251 NLRB No. 162**

(where E committs ULP by transferring only few Ees to relocated plant, Bd will then examine question of whether majority of unit Ees at new facility would have been comprised of Ees from old facility had it not been for E's unlawful activity)

8027-7200 Replacement of non-ULP strikers

Pennco, Inc. **250 NLRB No. 093**

(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

8027-7500 Lack of activity on part of bargaining representative

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

8027-7500-5000 Grievances

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

8027-8300 Disinterest of unit members

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

8027-9000 Employee petition repudiating certified union

P. A. Incorporated **248 NLRB No. 077**

(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

C. Langenfelder & Sons, Inc. **JD-822-79**

(E's refusal to take any action regarding executing contract until qcr resolved justified by decertification ptn signed by majority of unit Ees, absent evidence E or its representatives assisted in obtaining signatures or unlawfully enmeshed itself in decertification movement)

8027-9500 Checkoff authorizations

The Workshop, Inc. **JD-230-80**

(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's after E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

8033 UNION POSITION INCONSISTENT WITH ITS OBLIGATION TO REPRESENT EMPLOYEES

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**

(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

8034 ABANDONMENT OF EMPLOYEES BY UNION

Martinsburg Concrete Products Co. **248 NLRB No. 172**

(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

Glomac Plastics, Inc. v. N.L.R.B. **600 F.2d 3 (C.A. 2, 1979)**

8034—Cont.

(ct entered judgment enforcing bargaining order where ct had remanded cause to Bd for reconsideration of propriety of bargaining order and, pursuant to that remand, Bd had reassessed remedial order and, notwithstanding its assumption of the accuracy of the E's principal claims of substantial Ee turnover in unit and/or abandonment of unit by U, nevertheless entered supplemental order affirming that the original relief granted remained appropriate)

8036 CONDUCT OF UNION REPRESENTATIVE DURING BARGAINING

8036-0100 Generally

International Medication Systems, Ltd. **253 NLRB No. 120**
(failure of U to present final offer of E to unit members can not be used as evidence of E's good faith doubt of majority status since any inference drawn for U's behavior is merely speculative)

8036-5500 Attacking preconditions to bargaining

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8036-6000 Lack of diligence in pursuing bargaining objectives

Tri-State Carpenters & Joiners District Council **250 NLRB No. 125**
(notwithstanding over year passed after contract expired where U wrote E proposing to initiate bargaining on new contract and during this interim Ees negotiated wage increases by themselves, U still representative of Ees since it had processed grievance through arbitration, had written Ees it would negotiate on their behalf, and E knew that Ees considered U as its bargaining agent)

8036-6500 Failure to make timely response to proposal

W. G. Best Homes Corporation **253 NLRB No. 123**
(E's failure to bargain regarding subcontracting its transportation department, not unlawful, where U failed to request bargaining regarding subcontracting, notwithstanding U was apprised of E's economic problems and on notice of its intent to subcontract its transportation department to cut costs)

8040 CONDUCT OF EMPLOYER DURING BARGAINING

8040-3300 Employer gave adequate notice

W. G. Best Homes Corporation **253 NLRB No. 123**
(E's failure to bargain regarding subcontracting its transportation department, not unlawful, where U failed to request bargaining regarding subcontracting, notwithstanding U was apprised of E's economic problems and on notice of its intent to subcontract its transportation department to cut costs)

8042 EXISTENCE OF BINDING AGREEMENT

Associated Grocers **253 NLRB No. 005**
(no violation where E gave U adequate notice that it planned to discontinue job of packaging potatoes in unit and agreed to bargain over)

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(even assuming parties' private settlement agreement had been executed, whereby E had withdrawn its exceptions to RD's report on challenged ballots and U had agreed to withdraw ULP charges, terms of settlement agreement had no bearing on E's obligation to recognize and bargain with U, where U received majority vote in election; E's allegation that U breached agreement held immaterial to issues involved in instant summary judgment proceeding and did not justify E's refusal to bargain)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(contract not void for uncertainty, where E signed extension stipulating that E would be bound by whatever terms and conditions were negotiated with multi-E association since there was no evidence of coercion or duress and E and U actually continued their collective bargaining relationship beyond one year provided by extension stipulation and in accordance with past practice)

8045 DEFENSES BASED UPON CONTRACT CONSIDERATIONS

8045-1200 Actions permissible in absence of contract

Island Typographers, Inc. **252 NLRB No. 003**
(E bound by unsigned collective bargaining agreement where it complied with all its terms for 1st year of contract term and gave U no reason to believe it repudiated contract terms already agreed upon)

Westwood Import Company, Inc. **251 NLRB No. 162**
(while successor E is ordinarily free to set initial terms on which it will hire Ees of predecessor, where successor E did not mention changes in conditions of employment in interviews with Ees of predecessor, unilateral changes instituted after hiring Ees cannot be considered as initial conditions of employment under *Burns* and thus violative)

8045-3300 Incomplete contract

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(two inadvertent errors in written agreement submitted by U to E did not excuse E's complete refusal to execute agreement previously reached by U and E)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(contract not void for uncertainty, where E signed extension stipulating that E would be bound by whatever terms and conditions were negotiated with multi-E association since there was no evidence of coercion or duress and E and U actually continued their collective bargaining relationship beyond one year provided by extension stipulation and in accordance with past practice)

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E association and U had reached agreement on terms of contract fact that another separate agreement covering wage rates for other types of jobs still needed to be negotiated does not affect legal status of first contract)

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

8045-3700 Contract provisions expressly authorize actions

8045-3725 Management rights clause

Universal Security Instruments, Inc. **250 NLRB No. 092**
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Lever Brothers Company **JD-301-80**
(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

8045-6000 Illegal execution of contract

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**
(where E proferred defense of good faith doubt of U's majority status, ct held E could reasonably consider pre-10(b) circumstances because *sweetheart* relationship evidenced by unlawful prehire contract entered into by predecessor E sheds light on its commission of independent ULP in assisting U w/i 10(b) period; however, since successor E did not make clear the relationship, if any, between unlawful assistance during 10(b) period and its claim of good faith doubt, ct deemed it best left to Bd, which had not previously considered issue, to consider it in the first instance)

8045-6200 Breach of contract

8045-6240 Grievance and arbitration provisions

Indiana Bell Telephone Company, Inc. **252 NLRB No. 085**
(no violation where E at first would only arbitrate contractual grievances at its location but later offered to alternate with U in choosing site; moreover, E has no obligation to conduct all arbitrations at plant location, U's choice)

United States Postal Service **251 NLRB No. 033**
(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

8045-6280 Condonation of prior breach

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(U's condonation of E's unilateral implementation of new insurance plan *wipes the slate clean*; Bd's order which required E to c/d from unilaterally changing terms of agreement reversed since there was no ULP upon which to base charge)

8045-6700 Unlawful provision

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8045-8300 Automatic Renewal of Contract

KCW Furniture Company, Inc. **247 NLRB No. 079**

(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

8045-9500 Termination of contract

KCW Furniture Company, Inc. **247 NLRB No. 079**

(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

8049 DEFENSES BASED UPON PAST PRACTICES

Associated Grocers **253 NLRB No. 005**

(administering industrial vehicle tests to returning strikers, not violative where tests were a prestrike practice)

The Arundel Corporation **252 NLRB No. 059**

(E's establishment of corporate subsidiary held legitimate attempt to establish part of its business as non-U operation where E took advantage of past practices under which Us did not seek to apply their agreements to E's other subsidiaries, and new operation was not merely device for draining off work from existing unit work but was a *parallel and simultaneous one,* and E managed to create separate appropriate unit at new location)

8050 DEFENSE BASED UPON STATUTORY PROSCRIPTION

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

(contention that unilateral wage increase was justified by imminence of anticipated Presidential wage freeze rejected, since anticipated wage freeze was not such special circumstance that would justify remedial action under *N.L.R.B. v. Benne Katz, etc., d/b/a Williamsburg Steel Products Co., 369 U.S. 736, 743 (1962))*

8052 DEFENSE OF ECONOMIC HARDSHIP

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**

(on ct remand requiring Bd to admit newly discovered evidence pertaining to post-hearing agreements reached by parties, Bd affirmed ALJ's conclusion that new evidence established that, in negotiating with U resulting in agreement for substantially lower economic package than was had previsouly, E did not maintain its bargaining strategy for other than legitimate business considerations occasioned by its severe financial condition)

N.L.R.B. v. Inland Cities, Inc. **618 F.2d 117(T) (C.A. 9, 1980)**

(E who signed interim agreement which bound him to outcome of negotiations by E-association violated Act when it refused to comply with contract; repudiation is not excused because E was motivated by economic necessity)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**

(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding asserted good faith doubt of majority U status, where E did not notify U of intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

8054 WAIVER (SEE ALSO 775-0000)

Furr's Cafeterias, Inc. **251 NLRB No. 125**

(unilateral grant of merit increases prior to U certification, violative, where merit increases were not automatic, involved much discretion on part of E, and given at unpredictable time intervals; moreover, U did not waive its right to notice about each increase when it agreed during negotiations not to oppose such merit increases as long as increases were granted in accordance with certain specified time procedures)

8054-0100 Generally

Lever Brothers Company **JD-301-80**

(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

8054-0133 Waiver must be explicit

National Car Rental System, Inc. **252 NLRB No. 027**

(contract's *zipper clause* waiving parties' bargaining rights over subject matter not included, or referred to, in contract or w/i contemplation or knowledge of parties when they negotiated agreement held not waiver of effects of E decision to sell and relocate operations, since general *zipper clause* did not amount to *clear specific and unmistakable waiver* by U of right to be consulted regarding effects of elimination of all unit positions)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

Universal Security Instruments, Inc. **250 NLRB No. 092**

(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Tenneco Chemicals, Inc. **249 NLRB No. 171**

Arizona Public Service Company **247 NLRB No. 054**

(U held not to have waived its statutory right to bargain over E's subcontracting practices after existing subcontracting clause was declared invalid; contract *reopener* clause clearly and unmistakably manifested intention to preserve, rather than to forfeit, right to bargain about subject covered by any clause which had been invalidated, and *management rights* and *zipper* clauses contained no language which clearly and unmistakably committed U to forfeiture of right to bargain with E over subcontracting issue)

Lever Brothers Company **JD-301-80**

(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

8054-2000 Omission from contract of matters subject to collective bargaining does not constitute waiver

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

Southwestern Bell Telephone Company **247 NLRB No. 027**

(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

8054-2050 Effect of 'zipper' or wrap-up clause

Aeronca, Inc. **253 NLRB No. 026**

(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

National Car Rental System, Inc. **252 NLRB No. 027**

(contract's *zipper clause* waiving parties' bargaining rights over subject matter not included, or referred to, in contract or w/i contemplation or knowledge of parties when they negotiated agreement held not waiver of effects of E decision to sell and relocate operations, since general *zipper clause* did not amount to *clear specific and unmistakable waiver* by U of right to be consulted regarding effects of elimination of all unit positions)

8054-4000 Abandonment of demands does not constitute waiver

Eastern Maine Medical Center **253 NLRB No. 024**

(E's contention that because U tentatively accepted some of its proposals, it is absolved of bad faith bargaining charge, rejected; U does not *waive* refusal to bargain charges by signing up for best deal it can obtain and continuing to make effort to reach agreement)

National Car Rental System, Inc. **252 NLRB No. 027**

(U's failure to specifically request *effects* bargaining when it learned of sale and relocation of segments of E's rental operations not waiver of U's right to effects bargaining where E's announcement that entire unit was being terminated precluded U request to bargain; E had indicated that any attempt at bargaining would have been futile)

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**

(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment,* requires *conscious relinquishment* by U)

8054-5000 Effect of zipper clause

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**
(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment,* requires *conscious relinquishment* by U)

Arizona Public Service Company **247 NLRB No. 054**
(U held not to have waived its statutory right to bargain over E's subcontracting practices after existing subcontracting clause was declared invalid; contract *reopener* clause clearly and unmistakably manifested intention to preserve, rather than to forfeit, right to bargain about subject covered by any clause which had been invalidated, and *management rights* and *zipper* clauses contained no language which clearly and unmistakably committed U to forfeiture of right to bargain with E over subcontracting issue)

8054-9000 Failure to request that employer bargain over impact of changed conditions

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(defense of *waiver* not available to E where E granted unit Ees merit wage increases, percentage wage increases, and extra paid holiday w/o giving U sufficient opportunity to bargain over those unilateral changes which it wanted to do, E and U had made no attempt to bargain on any economic issue during initial negotiations, hence neither party could contend that impasse had been reached justifying unilateral action)

Exxon Company, U.S.A. **253 NLRB No. 027**
(8(d) provides that U's failure to discuss E's unilateral modification of contractual terms or conditions of employment is not defense to ULP)

National Car Rental System, Inc. **252 NLRB No. 027**
(U's failure to specifically request *effects* bargaining when it learned of sale and relocation of segments of E's rental operations not waiver of U's right to effects bargaining where E's announcement that entire unit was being terminated precluded U request to bargain; E had indicated that any attempt at bargaining would have been futile)

Island Typographers, Inc. **252 NLRB No. 003**
(where E, more than 6 months prior to charge being filed, unilaterally and openly introduced cold type process operated by non-U Ees without U's timely objection, no violation and E's action effectively changed terms of unsigned contract so as to exclude cold-type work from jurisdiction of U)

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue;* no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Charmer Industries, Inc. **250 NLRB No. 031**
(U did not waive its right to contest Es' unilateral change in work procedures where U did make request for bargaining over such procedures)

8059 DEFENSE OF CURRENT BARGAINING DEVELOPMENTS AND INDUSTRY PRACTICE

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(contention that unilateral wage increase was justified by imminence of anticipated Presidential wage freeze rejected, since anticipated wage freeze was not such special circumstance that would justify remedial action under *N.L.R.B. v. Benne Katz, etc., d/b/a Williamsburg Steel Products Co., 369 U.S. 736, 743 (1962)*)

8063 STRIKES

8063-0100 Generally

8063-0150 Obligation to bargain during strike

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

8072 PENDENCY OF BOARD PROCEEDINGS

8072-2800 Filing of decertification petition

Pease Company **251 NLRB No. 080**
(E's refusal to meet and bargain with U, and failure to arrange another meeting, unlawful; E's failure to timely notify U of its intention to suspend negotiations casts doubt on its position that it had obligation to suspend negotiations because of pending decertification ptn which assertedly raised qcr, and was wrong as matter of law; Bd's prior order to bargain had not been complied with at time of ptn, and existence of unremedied unlawful refusal to bargain prohibits finding qcr exists)

8072-4200 Pendency of ULP charges

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

8072-6300 Request for review of Regional Director's decision

Madison Detective Bureau, Inc. **250 NLRB No. 062**
(refusal to bargain with certified U before there has been final action by Bd on request for review of RD's Decision on objections, violative)

8076 PENDENCY OF COURT PROCEEDINGS

8076-6700 Review of Board Finding of ULP

Jeffrey Manufacturing Division, Dresser Industries, Inc. **252 NLRB No. 084**
(refusal to bargain violative, notwithstanding contention that E need not bargain with U until it has obtained complete review of previous ULP proceeding, since it is well established that collateral litigation does not suspend duty to bargain)

8079 ULP's BY OTHER PARTY

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

8081 INVALIDITY OF CERTIFICATION OR RECOGNITION

8081-1200 Denial of fair hearing

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's contention that certification was improper because E had been denied hearing on challenged ballots, rejected, since contention was merely attempt to relitigate matters in C proceeding which had been previously litigated and decided in R proceeding)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(hearing was not required on whether alleged misrepresentation had impact on election and whether attributable to U since no material issues of fact existed where E failed to come forward with specific evidence to refute RD's finding that statement did not affect Ees' votes)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

8081-2500 New matter or evidence

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's contention that certification was improper because U breached alleged private settlement agreement which is newly discovered and previously unavailable evidence, rejected, since alleged breach of agreement has no bearing on issues herein)

8081-4300 Union's conflict of interest

N.T. Enloe Memorial Hospital **250 NLRB No. 078**
(in unit of Ees represented by association which admitted supervisors to membership, there is no conflict of interest which would disqualify association as bargaining representative where one unit member is supervisor but is not engaged in collective bargaining)

8081-5000 Fairness of election

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(E's refusal to bargain with U representing unit of plant operations department Ees at hospital on ground U's certification was invalid because unit was inappropriate as matter of law unlawful, where E did not raise any issue which is properly litigable in ULP proceeding herein, and ct decisions relied

8081-5000—Cont.

on by E for its position in opposition to GC's mtn for summary judgment are not controlling)

Valley Rock Products, Inc. **JD-(SF)-285-79**
(defense sustained in view of threats and assaults by U representative against E's officers, and failure to count ballot of Ee on leave of absence at time of election)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(E's contention its refusal to bargain justified by alleged misrepresentations of Ee who was active in U campaign, rejected, since remarks not attributable to U where U neither authorized nor condoned them, and remarks did not create atmosphere of fear and violence but rather had no effect on Ees' votes)

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(8(a)(5) violation upheld where on remand Bd inferred that supervisors' pro-U activities did not impair Ees' free choice in election, and ct found that Bd's inference did not transgress bounds of reason)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**

8081-6200 Appropriateness of unit

Goldies, Inc. v. N.L.R.B. **628 F.2d 706 (C.A. 1, 1980)**
(contention that certified bargaining unit was improper because it included four persons who were *supervisors* rejected, where such persons were found nonsupervisory Ees)

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1980)**
(ct remanded to Bd for reconsideration of its finding that E violated Act by unilaterally altering job requirements of Ees in light of ct's opinion that Bd had improperly made finding as to inclusion in unit of Ees affected by such unilateral change)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's contention its refusal to bargain justified as U represented inappropriate unit, rejected, since not clear unit would have been inappropriate absent stipulation; further, E had not raised issue previously and had agreed to E's request for desired exclusion)

Safety Electric Corporation and San Joaquin Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**
(Ees of two corporations found to be single E shared same type of skills and duties and should be included in same bargaining unit as accretion to original bargaining unit)

8081-7500 Validity of ballots

Valley Rock Products, Inc. **JD-(SF)-285-79**
(defense sustained in view of threats and assaults by U representative against E's officers, and failure to count ballot of Ee on leave of absence at time of election)

N.L.R.B. v. A. G. Parrott Company **630 F.2d 212 (C.A. 4, 1980)**
(Bd's order to bargain denied where ballot, decisive of election, was signed, and ballot, having substantial arguments for and against counting it, was placed in an anomalous position and relegated to a position in limbo and, therefore, certification of U was error and E had no duty to bargain)

8081-8100 Validity of authorization cards

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(objection to receipt in evidence of Ee's card on ground that it was dated one month prior to date shown in U organizer's notes, overruled in view of U organizer's credited testimony that her writing of the date on her notes was in nature of clerical error, fact that date marked on card itself was date on which organizational activities were conducted, and absence of evidence that signature on card was other than authentic)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(authorization cards signed at U meeting held not invalidated by presence of assertedly supervisory Ees, where they were not considered by Ees to be supervisors, none of them exerted any influence over Ees' U activities, and they were minor supervisors at most)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(card valid, where objective facts, as evidenced by events contemporaneous with signing, did not show that alleged misrepresentations made to signer that *everybody* had signed was decisive factor causing him to sign)

8081-9300 Union lacked majority when recognized

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's denial that U was Ee representative held w/o merit, where Bd, in prior decision certifying U as Ee representative, disposed of such issue, and it therefore cannot be relitigated herein)

Machine Tool and Gear, Inc. v. N.L.R.B. **633 F.2d 216(T) (C.A. 6, 1980)**
(contention that Bd was in error in finding E unlawfully failed to recognize and bargain with U because alleged misrepresentations by U organizers to non-English speaking and illiterate workers prevented acquisition of actual majority support for U rejected, since Bd's finding that there were no misrepresentations outside standard set out in *N.L.R.B. v. Gissel* is supported by substantial evidence)

8082 ELIMINATION OF UNIT OR JOB CLASSIFICATION FROM UNIT

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(E's contention that bargaining unit ceased and thus E's obligation to bargain ceased when last active Ee in unit ceased work, rejected, since in unit involving normal fluctuating demand for Ees, work force was deemed to consist of Ees on layoff with reasonable expectancy of further employment as well as Ees actively working, and therefore unit continued to exist and with it E's obligation to bargain; before contract expired, E continued to seek work of type normally performed by unit Ees and, after contract expired, obtained such work and employed Ees to perform it)

Associated Grocers **253 NLRB No. 005**
(unilaterally establishing, and setting wage rate for bargaining unit's new cashier position and offering to bargain after change effected, violative)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(transfer of Ees from E to E's alter ego, unlawful, since E's purpose for transfer was to avoid its collective bargaining obligation to Ees represented by U)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8084 OTHER MATTERS PERTAINING TO PRIOR REPRESENTATION CASE

Howard Johnson Company **250 NLRB No. 161**
(although E did not receive Bd's telegrams notifying it of Bd's rulings on E's requests for review of RD's D/O directing election, E had indirectly received notice of Bd's denial of requests for review, and E's assertion that its technical right to receive notice from Bd itself negated its duty to bargain held not supported by law; Bd is not required to place consequences of its own delay, even if inordinate, upon wronged Ees to benefit of wrongdoing E)

8085 STATE CERTIFICATION

Taylor Hospital **249 NLRB No. 031**
(refusal to bargain, unlawful where certification by state labor board met Bd's standards for granting comity and there was no newly discovered evidence presented or lack of due process or other grounds found for refusing comity, and long passage of time since certification due to E's exhausting its remedies, does not warrant relieving E of its bargaining obligation)

8090 CHANGE IN EMPLOYER'S OPERATIONS

8090-0100 Generally

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

8090-1000 Closing of plant

Universal Security Instruments, Inc. **253 NLRB No. 019**
(E's refusal to recognize U as representative of P&M Ees at its new plant after it closed existing plant, moved its production lines to new location and transferred those Ees who accepted offer of transfer to new facility, violative)

8090-2000 Closing or sale of department, division, or operation

Scott Printing Corporation **249 NLRB No. 134**

8090-2000—Cont.

(Bd. in affirming its prior D/O, found E and its *alter ego* may not now allege that at time of refusal to bargain, they had good-faith doubt as to U's continuing majority support, since defense was based on events induced by *sham* sale to E's *alter ego*; purpose of sale was to enable E to avoid its duty to bargain with U)

8090-4000 Transfer of operations to another location

Universal Security Instruments, Inc. **253 NLRB No. 019**
(E's refusal to recognize U as representative of P&M Ees at its new plant after it closed existing plant, moved its production lines to new location and transferred those Ees who accepted offer of transfer to new facility, violative)

Westwood Import Company, Inc. **251 NLRB No. 162**
(withdrawal of recognition and failure to honor contract at relocated plant 35 miles from old site during period contract served as bar and no qcr present, violative, otherwise, E could unilaterally eliminate or change representative at time when Bd would refuse to allow change; relocation, providing operations and equipment remain substantially same at new location and substantial percentage of Ees (though less than 50) at old plant transfer to new location, has little effect on bargaining obligation)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(withdrawal of recognition of U as bargaining agent for Ees transferred from subsidiary to parent organization in same building, unlawful, as they still remained part of bargaining unit)

Monongahela Valley Hospital, Inc. **248 NLRB No. 013**
(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

8090-5000 Administrative action eliminating employee category

Yellow Taxi Company of Minneapolis, d/b/a
Suburban Yellow Taxi Company **249 NLRB No. 035**
(E's withdrawal of recognition from and refusal to continue to recognize and bargain with U as representative of E's lessee drivers, unlawful; contrary to E's contention, drivers were found to be Ees and not independent contractors)

8090-6000 Subcontracting

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

8090-8000 Manufacture of new product by new method

Andersen Sand & Gravel Company **JD-655-80**
(E which was engaged in manufacture of prefabricated structual concrete signing contract with Laborers in regard to representation of Ees in new wet concrete operation, unlawful, since E had obligation to bargain with Teamsters where Ees in new operation part of existing unit represented by Teamsters; inasmuch as work was performed in same plant with same tools, basically same wages, under same general supervision and working conditions; nor was operation result of establishment of new division where operation neither physically nor functionally distinct, and E's proposal for new division during bargaining had been withdrawn)

8090-9000 Reopening after shutdown

N.L.R.B. v. Circle T Corporation and Meat Men
Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

536 UNION COERCION OF EMPLOYEES (8(b)(1)(A))

0100 GENERALLY

0150 SCOPE OF PROSCRIPTION

0150-7500 Conduct reasonably calculated to coerce

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(U's unreasonable and arbitrary course of action may constitute breach of duty of fair R even w/o hostile motive)

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**
(although neither cts nor Bd will judge wisdom or fairness of particular U rule, they will inquire into whether rule reflects legitimate U interests, and *if rule invades or frustrates overriding policy of labor laws the rule may not be enforced)*

1200 UNION INTERFERENCE WITH EMPLOYEE REFRAINING FROM ENGAGING IN UNION ACTIVITY

Machinists, Lodge 727 (Lockheed-California Company, A Division of Lockheed Corporation) **250 NLRB No. 032**
(U's refusal to give effect to member's resignation violative where member willing to meet financial core membership obligation, no provision in U's constitution which restrains membership resignation, and effect of membership is to deprive member from accepting employment wherever U is involved in strike as such conduct prohibited by constitution)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(specific evidence of intent to encourage U membership not essential; *U violates 8(b)(1)(A) and (2) of Act if it or its agent adversely affects Ee's job for purely personal or arbitrary reasons*)

2500 FORM OF UNION CONDUCT

2501 GENERALLY

2501-8000 Noncoercive circumstances

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(where E merely introduced U officials to its Ees; officials had Ees sign U membership cards and stated that they wanted Ees to get into U apprenticeship program, not violative because U had majority support and E's actions were non threatening)

Teamsters Local 515 (Roadway Express, Inc.) **248 NLRB No. 020**
(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

2505 INTERROGATION OF EMPLOYEES

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**
(questioning members about conversations with Bd agent w/o giving assurances against reprisal, violative)

2506 PICKETING

Operating Engineers, Local No.12 (Wilshire Fremont Associates) **252 NLRB No. 149**
(picketing by U which claimed it was engaged in informational picketing at construction site regarding independent contractor's practice of undercharging for work he was performing for owner-builder, unlawful, where object was to force contractor to join U, as evidenced by U representative's clear signal to owner-builder's superintendent and independent contractor that such was the object, even if such object was only one among others)

2509 THREATS TO EMPLOYEES

2509-0100 Generally

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 169**
(no violation by U member's threat to get fellow Ees for circulating decertification ptn where it could be considered threat to take lawful action unde U's internal rules as well as to engage in unlawful conduct)

2509-0600 Prohibiting resignation from union during strike

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(violation by informing member that he could be fined for crossing picke line during strike and that he could not resign during strike)

2509-1200 Refusal to refer

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 09**
(threats to refer Ees not at all, not to refer them to jobs near home or t refer them to undesirable work because of Ees' refusal to sign checkoff authorizations and filing of charges with Bd, unlawful)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 10**
(violation bythreatening to refuse to refer Ee for future employment becaus he opposed proposed U dues increase)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 02**
(threats affecting Ee as well as fellow members of U in their dispatches fro hiring hall held violative when made because Ee filed charges with Bd an were employment related)

Bechtel Power Corporation **248 NLRB No. 16**
(statements made by U officer at a bar during argument on U politic implying refusal of hiring hall referrals to Ee-members because they suppor- ed candidates running in opposition to U incumbent officers, violativ

2509-2500 Loss of employment

Classic Truck Rental Corp. **251 NLRB No. 05**
(U representative's statement to drivers' helpers that he had no objection t their joining U representing drivers, and if they wanted to, they could jo but that he would not guarantee their jobs because E might dismiss the not unlawful, where representative had no apparent control over helper employment, and there was no evidence that representative was agent of E

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 10**
(violation bythreatening to cause discharge of Ee and to keep him fro working in the industry because he opposed U dues increase)

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 01**
(U steward's statement to Ee that if he did not obtain U permit other E would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as n evidence that U sought to involve E)

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 10**
(threats of job loss or bodily harm for failing to support incumbent for offi in local U, unlawful)

Baine Service Systems, Inc. **248 NLRB No. 0**
(statement to Ees that they were compelled to join U as condition employment)

Siro Security Service, Inc. **247 NLRB No. 1**
(U threatening to cause discharge of Ees if they did not execute applicatio and checkoff authorizations when it did not have majority and w/o acco ing Ees 30 day grace period)

Teamsters, Local No. 671 (Connecticut Natural Gas Corporation) **JD-558-**
(violation where U official threatened to cause Ee's discharge, evicted h from U office, and told him not to return, thus causing him to lose str benefits, because of his prior protected activity of supporting rival U attempt to replace respondent U)

2509-2500—Cont.

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(threat that U would seek to impair job status of member for seeking access to Bd for decertification purposes, unlawful)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to keep Ee from working in the industry where there was a U because he opposed increase in U dues)

2509-5000 Loss of employment benefits

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**
(where U refused to reimburse elected U executive committee member for time he took off from work in connection with executive board meetings, U president's stating that he caused the cut-off of the executive member's reimbursement partly because of the executive member's opposition to and attacks on U's president and persons associated with the president, violative)

2509-6200 Lack of representation

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to refuse to represent Ee because he opposed increase in U dues)

2509-7500 Violence

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(threats of job loss or bodily harm for failing to support incumbent for office in local U, unlawful)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(where truckdriver refused to join strike and attempted to cross picket line accompanied by his wife and son, U agent's telling truckdriver that *with a few broken bone, you wouldn't be able to drive that truck,* violative)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(where truckdriver refused to join strike and attempted to cross U's picket line accompanied by his wife and son, U agent's telling truckdriver that he knew where truckdriver lived and where his son went to school, violative since, in the context of U's agent's other threats of bodily harm to truckdriver, U agent impliedly threatened to harm truckdriver's family)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(shop steward's telling two of E's drivers that because they crossed picket lines U had their number and they were going to get hurt by outside teamsters, violative notwithstanding shop steward's concluding statement that *he was telling them as a friend*

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(international and local U's threats, through local's business agents (appointed by international during its trusteeship of local) of physical violence against member for his talk about running against business agent in election, unlawful)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(local U's threat of serious physical harm or violence against member for filing charge with Bd against U, unlawful)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(threats uttered by pickets to non-striking Ees as they crossed picket line are not protected and are unlawful)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U not responsible for threats and violence engaged in by pickets where these actions took place away from picket line and no evidence was introduced to prove that this was U venture or extension of picket line activity)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(threats by unidentified picket to Ee as she walked home, unlawful, where picket left picket line to make threats)

Construction Teamsters Local 216, IBT **JD-(SF)-202-80**
(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities agaisnt E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(violation where strikers made various threats, during U-authorized and supervised strike, to inflict bodily harm upon Ees who did not honor U's picket line)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) **JD-195-80**
(violation where pickets attempted to cause nonstriking Ees to honor picket line by blocking ingress to premises, hitting Ees' cars with fists and picket signs, damaging and climbing on cars and obscouring Ees' vision while they attempted to enter premises)

Local 6, Longshoremen's Association (Baine Service Systems Incorporated) **JD-774-79**
(U president's telling Ee in presence of many other Ees, that he would kill Ee if Ee did not stop his activity towards removing U as established bargaining agent at E's nursing home, violative)

2509-8100 Change of working conditions

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where, after charge was filed against U for unlawful refusal to approve requested change in schedule because of requesting Ee's nonmembership in U, U adopted policy of disapproving all requests for change of schedule and told Ees it represented that such policy was being enforced because Ee had filed ULP charge against it with Bd)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where during period there was in effect U's unlawful order to approve no requests for change in schedule--because of pending ULP charge against it alleging discriminatory refusal of such request--U disapproved Ees' request for changes in schedule pursuant to said order)

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(threatening Ee with job-related reprisals because she initiated grievance proceedings, unlawful)

2509-8700 Harassment

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(pickets uttering obscenities when non-striking Ees crossed picket line, not unlawful where epithets used by pickets are typical kind of abusive language often found on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(pickets following vehicles of non-striking parties, unlawful where such activity had its origins in picket line activity)

2509-9300 Fines and other sanctions for violating union rules and opposing union

GAIU Local 13-B, Graphic Arts International Union (Western Publishing Co., Inc.) **252 NLRB No. 130**
(rule instituted by U as bargaining tactic against mandatory overtime which was lawfully imposed constituted unprotected partial strike and U's disciplining of its members who refused to engage in such unprotected activity, violative; Bd did not decide legality of rule if instituted to protest ULPs committed by E rather than as bargaining tactic, since no ULPs found against E, U waited 2 months after overtime ban implemented to file ULP charges and U's announcement of overtime ban contained no mention of ULPs)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**

2509-9300—Cont.

(violation bythreatening Ee with internal U discipline because he opposed increase in U dues)

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 169**
(threat that U would bring charges and assess fines against members supporting decertification effort during contract negotiations and strike, unlawful)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's threats to members of fines and/or expulsion for circulating ptn seeking to undermine U's declared bargaining goals regarding insurance coverage, and thereby compromising contract negotiations, not unlawful, since U legitimately exercised its right to prevent erosion of its bargaining representative status and to use discipline against members who refused to assist U in solidifying such status)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's conditioning of threats of discipline, including use of fines, on whether or not members maintained or withdrew decertification ptn, unlawful)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(violation by informing member that he could be fined for crossing picket line during strike and that he could not resign during strike)

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**
(although neither cts nor Bd will judge wisdom or fairness of particular U rule, they will inquire into whether rule reflects legitimate U interests, and *if rule invades or frustrates overriding policy of labor laws the rule may not be enforced)*

2509-9500 Unspecified

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**
(local's president accusing member witnesses of being *lying rats and bastards* at prior Bd hearing and stated that they would *get theirs*, violative, since such statements constituted implied threats of reprisals)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening Ee with reprisals because he opposed increase in U dues)

2516 CONDUCT TO PROTECT STATUS AS REPRESENTATIVE

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**
(certified bargaining representative's removal of notices concerning grievances posted by rival U in derogation of certified representative from bulletin board while leaving rival U's organizing material undisturbed, not unlawful; rival U's notices were not protected and there was no evidence of coercion of Ees or retribution or retaliation for posting notices again or proof of blanket denial of access to Ees by rival U)

2518 VIOLENCE AGAINST EMPLOYEES

2518-0100 Generally

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U violated Act where pickets damaged vehicles in presence of U agents)

2518-2000 On picket line

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(threats of bodily harm to replacement Ee, violative)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(individual U members cannot be considered agents of U *per se*; however, if picket line misconduct occurs, U responsible for pickets' actions even if particular picket who engaged in misconduct cannot be identified, and even responsible for misconduct away from picket line which was reasonable extension of actions which occurred on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U cannot abdicate responsibility to control its picket line with inaction where either U leaders or picket captains are present when picket line misconduct occurred)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U violated Act where pickets damaged vehicles in presence of U agents)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) **JD-195-80**
(violation where pickets attempted to cause nonstriking Ees to honor picket line by blocking ingress to premises, hitting Ees' cars with fists and picket signs, damaging and climbing on cars and obscouring Ees' vision while they attempted to enter premises)

2518-4000 Away from picket line

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' threats to Ees of company which provided protection services to E at struck premises, violative)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(individual U members cannot be considered agents of U *per se*; however, if picket line misconduct occurs, U responsible for pickets' actions even if particular picket who engaged in misconduct cannot be identified, and even responsible for misconduct away from picket line which was reasonable extension of actions which occurred on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U not responsible for threats and violence engaged in by pickets where these actions took place away from picket line and no evidence was introduced to prove that this was U venture or extension of picket line activity)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(threats by unidentified picket to Ee as she walked home, unlawful, where picket left picket line to make threats)

2518-6000 Mass picketing

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' blocking entrance to parking lot while carrying ax handles, iron bars, signs and boards with large nails protruding from them, violative)

2518-8000 Obstructing ingress to and egress from plant

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' threats that there would be trouble if driver of fuel truck insisted on entering plant, violative)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(pickets blocking ingress and egress to facility in presence of U agents, unlawful notwithstanding such blocking occurred for only a few minutes)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U's toleration of picket interference with ingress and egress to facility, unlawful)

2518-9000 For intra-union or contra-union activity

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(pistol-whipping by local U's agent of member for opposing election or leadership of local's business manager, unlawful)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's gestures drawing Ees' attention to his apparently armed condition in order to cause them to believe he was carrying a weapon, accompanied by remarks threatening resort to physical violence, unlawful, since conduct was intended to frighten Ees because they had spearheaded decertification effort)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's resort to physical force in pushing Ee, who had spearheaded decertification effort, toward apparently armed fellow agent, and doing so in

2518-9000—Cont.

view of other Ees, unlawful, since it was not only attempt to punish Ee involved, but also to demonstrate to other Ees how U intended to treat its Ee-opponents)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's conduct in calling to his assistant in presence of Ee that Ee was *with the company,* and further stating *we're going to get him,* unlawful, as attempt to threaten opponent of U with violence)

2519 VIOLENCE AGAINST SUPERVISORS

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' blocking entrance and *rocking* cars carrying supervisory personnel and company attorneys in effort to overturn them, violative)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' blocking entrance and destroying tires of several cars of different supervisors with nailed board or slashing tires with knife, violative)

2520 BLACKLISTING OF EMPLOYEES

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(U business agent's calling Ee, who refused to join strike and refused to honor U's picket line, a scab, and telling Ee that he would never work in the state as teamster again, and that there would be lot of people watching him, violative, since U agent's remarks amounted to threat to blackball Ee from employment as teamster)

2522 DEMANDS AGAINST EMPLOYER

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**
(requesting Ees discharge for nonpayment of dues, w/o adequately informing her of her financial obligations to U, violative)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**
(causing E to discharge Ees because Ees had withdrawn their membership in U and had not been referred through U's nonexclusive hiring hall, violative, where such action created presumption that desired effect was to encourage U membership and was not shown to have been essential to effective performance of U's representation of its constituency)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

Siro Security Service, Inc. **247 NLRB No. 157**
(U demanding discharge of Ee who opposed U as bargaining representative and objected to deduction of U dues w/o his consent, unlawful)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(causing termination of Ee, suspended from local, from film crew because of U's threats to withhold U seal from finished film, violative, where E would have retained Ee irrespective of his lack of membership in local had not U threatened retaliatory action)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(although maintaining integrity of U's established trademark which has purpose of promoting employment of U members under U conditions is protected, withholding U seal for unlawful objectives is not privileged)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....*scab*)

Moser Brothers Welding, Inc. **JD-(NY)-38-80**
(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

2527 VIOLENCE OR THREATS THEREOF AGAINST EMPLOYERS KNOWN TO EMPLOYEES

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(pickets threatening 2 of E's officials with bodily harm as they crossed picket line unlawful, because of indirect effect upon Ees who heard threats or thereafter learned about them)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's statement to E's president, made repeatedly in presence of Ees entering plant on election day that E's president ...*better watch out. We're bad losers* held unlawful attempt to impress upon Ees that opposition to U was risky)

2527-5000 Destruction of employer's property

Industrial Chemical Corporation **JD-473-80**
(U held to have violated 8(b)(1)(A) through conduct of its vice president and of shop steward who deliberately broke main water line into E's plant; since they were U officials, U is responsible for their conduct; and destruction of E's property restrains Ees in exercise of their statutory rights by threatening their jobs and creating general atmosphere of fear and violence)

2529 VIOLENCE OR THREATS THEREOF AGAINST OTHERS

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL--CIO (North American Car Corporation) **248 NLRB No. 042**
(striking Ees' threat to inflict bodily injury upon driver of independent supplier, violative)

2530 REPRISALS AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**
(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(U's business nmanager informing E that Ee was to blame for problems among crew and causing Ee's discharge as toublemaker, unlawful, since action of business manager of rival for his post)

United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1989 (Caterpillar Tractor Company) **249 NLRB No. 123**
(Institution of internal U disciplinary proceeding against some members, selecting trial committee, and issuing formal notice of hearing on these charges because these Ee-members had appeared as witnesses and testified adversely to U's grievance in arbitration hearing held pursuant to provisions of collective-bargaining agreement, violative, notwithstanding charges were later withdrawn since Respondent took no specific action to repudiate coercive effect of its conduct)

Teamsters Local 515 (Roadway Express, Inc.) **248 NLRB No. 020**
(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**
(U's refusal to reimburse elected executive board member for time he took off from work in connection with executive board meetings, violative, where U would not have treated the executive member in that manner had he not

2530—Cont.

opposed positions favored by U's president and spoken unfavorably of U's president and persons with whom the president considered himself associated)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-576-80**
(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

Teamsters, Local No. 671 (Connecticut Natural Gas Corporation) **JD-558-80**
(violation where U official threatened to cause Ee's discharge, evicted him from U office, and told him not to return, thus causing him to lose strike benefits, because of his prior protected activity of supporting rival U in attempt to replace respondent U)

Construction Teamsters Local 216, IBT **JD-(SF)-202-80**
(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities against E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

2545 HIRING HALL AND OTHER REFERRAL PRACTICES

2545-0100 Generally

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(bonafide hiring hall arrangement is characterized by agreement between parties for E to notify U as jobs become available and U to send E sufficient manpower for E to fulfill his employment requirements)

2545-0600 Requirement of referral

Longshoremen's Union, Local 6 (Industrial Employers and Distributors Association) **249 NLRB No. 127**
(no violation where U hiring hall disciplined member by revoking his black book status which evidences holder's work experience and U determination that holder possesses highest adherence to principles of trade unionism, since revocation did not diminish member's hiring status or employment rights with respect to job calls involving skilled or unskilled work)

2545-1200 Refusal of referral

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**
(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**
(U's refusal to seek out and refer Ees specifically requested by E because they withdrew from U, and ceasing to register at nonexclusive hiring hall, not unlawful, where Ees should not have expectation that U would assist them in referrals to jobs once they severed their relationship with U)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(refusal to refer members because of their opposition to U officials violative)

Local 873, Electrical Workers (Kokomo-Marian Division, Central Indiana Chapter, National Electrical Contractors Association, Inc.) **250 NLRB No. 113**
(refusal to refer U member who was rightfully terminated from apprenticeship program not violative where collective-bargaining agreement provided that only journeyman or participants in training program could be referred; thus, presumption that U's action of refusing to refer U member will tend to coerce other members as a display of U power rebutted)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Bechtel Power Corporation **248 NLRB No. 166**
(absent any recall rights and statistical analysis of actual recall of laid-off Ees showing discrimination towards swing shift Ees, either individually or as group, GC failed to sustain burden proving such discrimination by U hiring hall practices, and thus by E)

Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) **248 NLRB No. 174**

Iron Workers, Local Union 433 (Stockton Steel Fabricators and Erectors, Inc.) **248 NLRB No. 033**
(U business agent at exclusive hiring hall who maintained separate lists for priority referrals and one for all others did not violate Act when he placed member of another local on non-priority list as this was w/i requirements of contract notwithstanding list keeping requirements of contract were not totally complied with)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(Bd held that U local had unlawfully refused to refer 2 members for work where GC showed that on dates in question and thereafter U's agent threatened to retaliate against his political opponents in local which included the two members, and manipulated hiring hall in order to discriminate against them; it was not necessary to show that jobs were available at time; and burden of negating GC's *prima facie* case fell on U as sole custodian of hiring hall records and its failure to produce them created adverse inference)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(no unlawful refusal of local U's hiring hall to refer where there was no request for referral or explanation for lack of request)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(Bd found refusal to refer member by U local unlawful notwithstanding lack of request for referral, since request would have been futile where U's agent had threatened retaliation against his political opponents in U which included member herein, and had effectuated discriminatory discharge of member; moreover U's self-serving memoranda recording its efforts to contact member for referrals after latter finally registered for referrals were made pursuant to procedures introduced to justify U's discriminatory referrals)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(local U agent's physical attack on member while he sought referral unlawfully deprived him of employment through job referrals)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(international and local Us held to have violated 8(b)(1)(A) when business manager appointed by international refused to refer one member because of his intra-U opposition to business manager, and he and his appointee refused to refer another member who had sought imposition of trusteeship while business manager was acting business manager, run against him in election, and filed intraU charges against him)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(no violation by local and international Us during international's trusteeship of local for refusal to refer two members seeking referrals as stewards where one steward did not even ask for referral to job as common laborer when told it was open, and other's name was not on out-of-work list)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(refusal to refer members who protested hiring hall operation policies (particularly selection methods employed by U officials operating hall) at U meetings, to local and International, to NLRB and other government agencies)

International Longshoremen's Association, Local 1414 **JD-357-80**
(unnecessary that GC demonstrate what specific jobs were available at time of discriminatory refusal to refer, inorder to establish violation)

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9)**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

2545-1500 Preference for union members

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(refusal to allow nonmembers sign out-of-work list at hiring hall, unlawful)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**

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(causing Ee not to be hired, violative, where U which ran nonexclusive hiring hall told E not to hire members of rival Us)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**
(delay in giving test which was required before referral would be made violative as test only required for nonmembers)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**
(while setting up categories for referrals based on experience in trade or working for particular employers not violative, automatic placement of nonmembers in lowest category is violative)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**
(testing of nonmembers in such manner as to result in their discrimination versus members, violative)

Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) **248 NLRB No. 174**

Sachs Electric Company **248 NLRB No. 092**
(U's request that members of sister Us (*travelers*), who had been referred out of U's hiring hall, quit their jobs in favor of unemployed members of U, coercive and unlawful, notwithstanding that requests were not accompanied by direct threats of reprisal; in view of fact that of 32 travelers none remained employed in short period of time, it strains credibility and contradicts record testimony to claim that they quit *voluntarily* and as a *courtesy* to their U brethren)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 006**
(violation where locals discriminated in operation of their hiring halls by preferring members to non-members and others as yet unidentified nonmembers in making job referrals; bypassing discriminatees because members were *recalled* or *requested* by Es not valid defense w/o letter of confirmation to U by Es, proving such specific request, as required by Consent Decree)

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**
(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments*, U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

2545-1800 Refusal to comply with seniority procedures

International Longshoremen's Association, Local 1414 **JD-357-80**
(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

2545-2500 Refusal of clearance by hiring hall

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U's business agent informed E who requested member by name that member did not qualify for dispatch by name because he did not have sufficient seniority under agreement to qualify for list from which such dispatches made)

2545-3100 Denial of access to employment roster

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(refusal to allow nonmembers sign out-of-work list at hiring hall, unlawful)

Local Union No. 948, Electical Workers (Lawrence Moore, an Individual) **253 NLRB No. 094**
(violation where, because it wanted to keep jobs with most overtime for its own members, local U refused to let *travellers* from another jurisdiction stay on its out-of-work list to wait for overtime jobs as they should have been under contract provision)

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**

International Photographers of the Motion Picture Industry, Local 659, et al.(Medway Productions, Inc.) **250 NLRB No. 052**
(U violated 8(b)(2) and 1(A) where under its preferential hiring agreement requiring new hires to have previous work experience with an E signatory to U contract, it refused to clear qualified applicants for employment as cameramen because they lacked U membership)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(removal of Ee's name from hiring hall's *out-of-work* list precluding Ee from being dispatched in manner prescribed by contractual rules held violative where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

2548 REFUSAL TO FURNISH INFORMATION

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(refusal to provide information about referral system to job applicant because he was not member of U and had filed charges against U and because U wanted to keep him from finding out whether he had been discriminated against by U in referral)

2554 REQUIRING PAYMENTS OTHER THAN DUES

2554-2500 Fine, assessment, reinstatement fee or back dues

International Brotherhood of Electrical Workers, Local NO. 12 (Commonwealth Electric Company) **252 NLRB No. 040**
(fining members who worked during strike and picketing, not unlawful; contrary to contention, U had not bargained to impasse on nonmandatory subject during negotiations precipitating strike and picketing)

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**
(where U and E entered into strike settlement agreement containing *amnesty* clause and U filed charges and imposed fines against members for strike breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**
(checkoff of *assessments* though specifically permitted in bargaining agreement and had been done in past nevertheless held unlawful because checkoff authorization cards did not list *assessments* as item that could be checked off)

2556 REFUSAL TO ALLOW WITHDRAWAL OF CHECKOFF AUTHORIZATIONS

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

American Nurses' Association **250 NLRB No. 175**
(refusal to honor revocations of checkoff authorizations, not unlawful where Ees failed to revoke w/i appropriate period)

American Nurses' Association **250 NLRB No. 175**
(resignations from U did not revoke dues checkoff authorization, notwithstanding GC's contention that resignations from U membership served to revoke checkoff authorizations insofar as they specifically refer to deductions and payment of monies in an amount equal to *all my U membership dues and membership assessments*)

American Nurses' Association **250 NLRB No. 175**
(Ees prohibited from modifying dues checkoff authorization, where Ees could not make unilateral changes in their preexisting checkoff authorization contrary to contract)

United States Postal Service **248 NLRB No. 002**
(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

2559 REFUSAL TO ACCEPT DUES OR OTHER PAYMENTS

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General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U notified member it would refuse to accept his dues until his fine had been paid toll in view of fact member was not working for E which was party to bargaining agreement containing U security clause, and where U's Local Freight Agreement contained exclusive hiring hall procedure which required U to refer registrants w/o regard to U membership)

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**
(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

2561 DEMAND FOR CHECKOFF DUES OF RESIGNED MEMBERS

Peoria Newspaper Guild, Local 86 (Peoria Journal Star) **248 NLRB No. 028**
(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

2562 DEMAND FOR DUES OF MEMBERS WHO HAVE REVOKED CHECKOFF AUTHORIZATION

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

United States Postal Service **248 NLRB No. 002**
(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

2563 MINORITY UNION'S ACCEPTANCE OF EXCLUSIVE BARGAINING AUTHORITY

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(international U held to have violated 8(b)(1)(A) where it asked for and obtained recognition as Ee representative and obtained and began administering contract when it did not represent Ee majority following election, purporting to affiliate Ee committee with international, which was ineffective and void because election was conducted in violation of minimal standards of democratic procedure or due process; while international's actions connected with and following election were not regarded as taken in good faith, violation would not be excused even by showing of good faith)

Corrugated Structures, Inc. **252 NLRB No. 079**
(U's entering into and maintaining bargaining agreement with E when assertedly it knew that E had bargaining agreement with other U, not unlawful, where other U had not established itself as majority representatives of E's Ees)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(violation where U accepted recognition and executed contract at time when U did not represent uncoerced majority of Ees, and E did not employ work force which was substantially representative of anticipated Ee complement)

2563-5000 Good faith immaterial

Siro Security Service, Inc. **247 NLRB No. 157**

2564 UNION'S ACCEPTANCE OF REPRESENTATION STATUS FOR INAPPROPRIATE UNIT

Baine Service Systems, Inc. **248 NLRB No. 087**
(U and E by executing contract when both parties knew that size of unit was going to increase violated Act)

2565 CHANGE IN REPRESENTATIVE THROUGH CHANGE IN LOCAL

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**
(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

2567 RECOGNITION OF UNION DURING PENDENCY OF REAL QUESTION OF REPRESENTATION

Queen City Paving Co., Inc. **JD-(SF)-156-80**
(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec. 8(f) was no defense because of existence of qcr)

2569 RENEWAL OF CONTRACT AFTER LOSS OF MAJORITY

2569-3300 During insulated period of contract

Clark Equipment Company **249 NLRB No. 094**
(no violation of 8(a)(2) by E or 8(b)(1)(A) by incumbent U where they negotiated and executed new contract when incumbent no longer represented majority of E's Ees, since E lacked requisite knowledge of incumbent U's loss of majority support; dissidents' committee and its leader withheld from E during insulated period the very evidence that would have required E to cease negotiating with incumbent U)

2569-3367 Where union has knowledge of loss of majority

Campus Housekeeping, Inc. **252 NLRB No. 072**
(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

2570 ACCEPTANCE OF ASSISTANCE FROM EMPLOYER

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(violation by E and favored U where E recognized and executed agreement with such U when U did not represent majority of E's Ees)

2571 DEDUCTION OF DUES WITHOUT CHECKOFF AUTHORIZATION

Edward L. Nezelek, Inc. **252 NLRB No. 070**
(E's deduction of dues w/o Ee's executing checkoff authorization and U's acceptance of dues for nonmembers w/o authorization violative)

2572 EXECUTION OR MAINTENANCE OF INVALID UNION-SECURITY AGREEMENT

United States Postal Service **248 NLRB No. 002**
(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

2576 DISCRIMINATORY MAINTENANCE OF CONTRACT CLAUSE

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO **253 NLRB No. 091**
(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-576-80**
(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal

2576—Cont.

elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

2576-5000 Superseniority

Teamsters, Local No. 671 (Connecticut Natural Gas Corporation) **JD-558-80**
(maintaining and enforcing contractual seniority clause according U stewards superseniority as to terms and conditions of employment beyond layoff and recall, unlawful)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

2581 DUTY OF FAIR REPRESENTATION

2581-0100 Generally

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(right to bring unfair representation actions is judicially *implied from the statute and the policy which it has adopted* and Congress has not specified what remedies are available)

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(duty of fair representation is also implicit in NLRA because that statute affords Us exclusive power to represent all Ees of bargaining unit)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(in order to determine whether U has fairly represented Ees, it is recognized that wide range of reasonableness must be allowed representative in serving unit it represents, subject to complete good faith and honesty of purpose in exercise of its discretion)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(U's unreasonable and arbitrary course of action may constitute breach of duty of fair R even w/o hostile motive)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**
(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

2581-0120 Section 7 as source of employee's right to fair treatment by representative

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

2581-0140 Section 8(b)(1)(A) as encompassing duty to represent fairly

Local No. 256, International Molders' and Allied Workers' Union, AFL-CIO-CLC (United States Pipe and Foundry Company) **253 NLRB No. 133**
(failure to process grievance assertedly because Ee was not member of incumbent U, not violative where agents of U were sympathetic and helpful in providing Ee with information and forms necessary to pursue grievance; record did not sustain contentions of GC and charging party that U acted arbitratily, discriminatorily or in bad faith with respect to pursuing Ee's grievance to arbitration)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(in order to determine whether U has fairly represented Ees, it is recognized that wide range of reasonableness must be allowed representative in serving unit it represents, subject to complete good faith and honesty of purpose in exercise of its discretion)

2581-0160 Duty owed all employees whom union represents

Exxon Company, U.S.A. **253 NLRB No. 027**
(charging service fee to nonU Ees for medical insurance coverage is *per se* violation where it was imposed for receiving term of employment for which U has bargained and which is due unit members by right)

United Steelworkers of America, AFL-CIO, CLC (Geraldine Shanks, an individual) **JD-464-80**
(refusal to process grievance for Ee because she was not U member violative)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**
(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-0180 Duty may be breached by action or inaction

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

2581-3300 Forms of representation to which duty applies

2581-3307 Union security requirements

Actors' Equity Association **247 NLRB No. 172**
(U unlawfully failed to represent non-resident alien members by maintaining and enforcing U security requirement that such members pay 5 percent of gross earnings while requiring significantly less dues from other members)

2581-3314 Operation of referral system

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(change in nature of work to which Ees were referred from usual work to undesirable work because of Ees' refusing to sign checkoff authorizations and filing of charges with Bd, unlawful)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(refusal to provide information about referral system to job applicant because he was not member of U and had filed charges against U and because U wanted to keep him from finding out whether he had been discriminated against by U in referral)

Laborers' International Union of North America, AFL-CIO, Local Union No. 1320 (Dunbar & Sullivan Dredging Co.) **253 NLRB No. 058**
(U business manager's departure from numerical order on referral list to preserve his son's employment, violative)

Laborers' International Union of North America, AFL-CIO, Local Union No. 1320 (Dunbar & Sullivan Dredging Co.) **253 NLRB No. 058**
(U's selection of Ees to be laid off unlawful, where motivated by desire to maintain employment for two job stewards even though their presence at jobsite was unnecessary at time of layoff)

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**

2581-3314—Cont.

(U's preference for referral of members over non-members in response to requests from Es not unlawful since hiring hall is not exclusive, either by contract or practice, notwithstanding number of members obtained all their employment through hiring hall, where language in agreement states *in the event any E should use the services of U to secure ... Ees* is clearly permissive and Es obtained Ees from other sources)

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**

(failure to refer member because of his support of rival of U business manager for that post and dispute over lack of receipts for dues and fees paid by his son which resulted in letter of complaint and hearing)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(removal of Ee's name from hiring hall's *out-of-work* list precluding Ee from being dispatched in manner prescribed by contractual rules held violative where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Plumbers, Local Union No. 412 (Thomas Mechanical, Inc.) **249 NLRB No. 098**

(failure to refer *traveler* U member from local U hiring hall not violative where *traveler* failed to follow procedures for registration for referral and also local U had rule which required *traveler* to be in jurisdiction 3 years before he could transfer into local U)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(delay in giving test which was required before referral would be made violative as test only required for nonmembers)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(while setting up categories for referrals based on experience in trade or working for particular employers not violative, automatic placement of nonmembers in lowest category is violative)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(testing of nonmembers in such manner as to result in their discrimination versus members, violative)

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**

(U which charged Ees monthly referral fee for participation in its hiring hall violated Act where it never effectively operated referral hall and purpose of fee was to make money for U)

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**

(bonafide hiring hall arrangement is characterized by agreement between parties for E to notify U as jobs become available and U to send E sufficient manpower for E to fulfill his employment requirements)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**

(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, not does use of subjective criteria in referral such as financial need necessarily reflect discriminatory movite and violative per se, provided such criteria subordinated to overall established objective system)

International Longshoremen's Association, Local 1414 **JD-357-80**

(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**

(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments*, U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**

(placing U leaders at top of out-of work list, unlawful, since not justified by representational needs where their presence not required in work place)

2581-3316 Operation of pension and health trust funds

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**

(Bd properly dismissed complaint alleging that maintenance and enforcement of cancellation provisions of pension plan unlawfully coerced Ees in exercise of right to vote to decertify U as Ee representative in that automatic cancellation rules effectively dictated Ees' choice to vote for continued representation by U; there was no evidence in the record or from the provisions themselves of intention to violate Act; provisions, on their face and as here applied, were not discriminatory or coercive; and their impact on Ee voting rights was indirect and served a legitimate business purpose of pension fund)

2581-3328 Operation of seniority system

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**

(placing U leaders at top of out-of work list, unlawful, since not justified by representational needs where their presence not required in work place)

2581-3338 Operation of driver dispatch system

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**

(allegation that U business agent (Horta) willfully misrepresented to Ee that decision by joint labor management committee establishing new dispatch rules for E's drivers, had eliminated driver preference from dispatch procedure, dismissed, where, in fact, driver preference had been temporarily eliminated upon adoption of new dispatch rules)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**

(allegation that U business agent, having advised Ee that he would seek restoration of driver preference rule at meeting of joint labor management committee considering new dispatch rules for E's drivers, took contrary position at such meeting and supported E's proposal to eliminate driver preference, dismissed, where at meeting agent affirmed existence of driver preference rule and, while he made no further effort to urge retention of driver preference, he appropriately deemed unnecessary any additional exhortation)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**

(allegation that U business agent (Moody) willfully misrepresented to Ee that driver preference had been eliminated by decision of joint labor management committee establishing new dispatch rules for E's drivers, dismissed, where it was not apparent why business agent would want to *willfully* conceal driver preference retention from Ee, his conduct hardly even rose to arguable level of negligence, and there was, at worst, misunderstanding by agent of thrust of Ee's inquiry regarding committee's decision)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**

(allegation that U violated Act by failing and refusing to seek E compliance with decision of joint labor management committee to preserve driver preference in dispatch procedure for E's drivers, dismissed, where U business agent, in absence of any knowledge of, or grievance about, noncompliance was not guilty of ULP for failing to monitor compliance with decision)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**

(allegation that U business agent failed and refused to prosecute in good faith Ee's grievance as to elimination of driver preference in E's dispatch procedure upon adoption of new dispatch rules, dismissed, where Ee had already been well represented by another business agent officially in charge of grievance presentation, merits of grievance had already been passed upon at time of agent's remark, and his candor about his own confusion with respect to preference practice must have seemed to him of little moment in the given situation)

2581-3342 Informing employees of rights under contract

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(U's failure to post provisions of agreement with Es relating to hiring hall's functioning held unlawful failure to advise job applicants of their rights and

2581-3342—Cont.

obligations under the agreement which led them to believe that signing out-of-work list was what was necessary to register for employment)

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**
(requesting Ees discharge for nonpayment of dues, w/o adequately informing her of her financial obligations to U, violative)

Electrical Workers, Local Union No. 1507 (General Electric Company) **252 NLRB No. 066**
(U's submission of Ee's dues checkoff authorization card to E thereby causing E to deduct such dues, violative, where U submitted the card to E after having permitted Ee to rescind the card which he had signed as result of misrepresentation regarding U-security contract made to him by U representative)

2581-3356 Informing employees of obligation under contract

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(U's failure to post provisions of agreement with Es relating to hiring hall's functioning held unlawful failure to advise job applicants of their rights and obligations under the agreement which led them to believe that signing out-of-work list was what was necessary to register for employment)

Western Conference of Teamsters, IBT (California Cartage Company, Inc.) **251 NLRB No. 052**
(where U negotiated contract with E and failed to adequately explain all ramifications of proposals, some of which involved Ees foregoing salary increase, no violation, where U's failure did not amount to intentional, wilfull misleading of Ees)

2581-3370 Negotiation of agreements

2581-3370-0100 **Generally**

Western Conference of Teamsters, IBT (California Cartage Company, Inc.) **251 NLRB No. 052**
(where U negotiated contract with E and failed to adequately explain all ramifications of proposals, some of which involved Ees foregoing salary increase, no violation, where U's failure did not amount to intentional, wilfull misleading of Ees)

2581-3370-0150 Fair treatment for all unit members

Exxon Company, U.S.A. **253 NLRB No. 027**
(charging service fee to nonU Ees for medical insurance coverage is *per se* violation where it was imposed for receiving term of employment for which U has bargained and which is due unit members by right)

2581-3370-5000 **Failure or refusal to cover all Employees in certified unit in negotiated contract**

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

2581-3370-8900 **Strike settlement agreement**

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**
(where U and E entered into strike settlement agreement containing *amnesty* clause and U filed charges and imposed fines against members for strike breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

2581-3384 Presentation of grievances

Local No. 256, International Molders' and Allied Workers' Union, AFL-CIO-CLC (United States Pipe and Foundry Company) **253 NLRB No. 133**
(failure to process grievance assertedly because Ee was not member of incumbent U, not violative where agents of U were sympathetic and helpful in providing Ee with information and forms necessary to pursue grievance; record did not sustain contentions of GC and charging party that U acted arbitrarily, discriminatorily or in bad faith with respect to pursuing Ee's grievance to arbitration)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(rejection of grievance because grievant was not U member, unlawful)

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**
(U's filing of grievance on behalf of terminated non-U Ees seeking their restoration with backpay, not unlawful, even though Ees objected to U's action, where E had terminated them pursuant to scheme whereby Ees would become U members and thus become available for referral back to E under lawful exclusive hiring hall contract; U was fully justified in its action since filing of grievance was used as device to counter E's scheme)

International Chemical Workers Union, Local No. 190 (FMC Corporation) **251 NLRB No. 204**
(U which refused to process Ee's grievance to arbitration where they believed he was not good U member because he had circulated petition protesting U conduct, did not attend U meetings, and had also gone to *outside agency* violated Act)

Steelworkers, Local No. 3029 (Gardner-Denver Company) **250 NLRB No. 114**
(U's failure to process grievance through to ultimate stage of contract's grievance procedures not violative where U acted in good faith and exercised its discretion in determining merits of case)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(U's failure to notify Ees that it was willing to process their apparently meritorious grievances, or its unsuccessful perfunctory attempt to notify one of the Ees, unlawful; U agent's asking Ee whether he had grievance forms did not constitute adequate communication to Ee, and it was not sufficient for U, after filing of charges, to have its lawyer request E to reinstate Ees)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(allegation that U business agent failed and refused to prosecute in good faith Ee's grievance as to elimination of driver preference in E's dispatch procedure upon adoption of new dispatch rules, dismissed, where Ee had already been well represented by another business agent officially in charge of grievance presentation, merits of grievance had already been passed upon at time of agent's remark, and his candor about his own confusion with respect to preference practice must have seemed to him of little moment in the given situation)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(U's efforts on Ee's behalf in grievance procedure, though not optimal, rose above perfunctory and unjustified treatment of Ee's problem and thereby comported with duty of fair representation)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) **249 NLRB No. 007**
(although it was bad form for U business agent to engage in argument with Ee at grievance proceeding dealing with Ee's problem, argument concerned technical matter of little importance and did not amount to failure to prosecute in good faith Ee's grievance)

San Francisco Web Pressmen and Platemakers' Union No. 4 (San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency) **249 NLRB No. 023**
(U's failure to carry grievance to arbitration stage of procedure not breach of duty where U conducted investigation and determined to its satisfaction that E's exertions were true; moreover it need not obtain explanation from grievant as Bd has not established that as requirement)

General Grocer Company **JD-591-80**
(U's alleged refusal to process grievance of member adversely affected by change in E's seniority truckdriver bidding system for city run deliveries, not unlawful, since there was no bad faith on U's part inasmuch as U considered that member's grievance was disposed of by disposition of another member's converse grievance; any discrimination toward member arose as a side effect of U action based upon relevant considerations and not upon capricious or arbitrary factors, since U had restoration of contract rights as its goal and had objective justification for its conduct)

United Steelworkers of America, AFL-CIO, CLC (Geraldine Shanks, an individual) **JD-464-80**
(refusal to process grievance for Ee because she was not U member violative)

Cowlitz Studd Company **JD-(SF)-141-80**
(U which successfully obtained Ee's discharge because E had violated contract provision when it hired him did not violate act when it refused to process grievance on Ee's behalf which sought his reinstatement)

Vulcan Fuel Corporation **JD-842-79**
(refusal of U to process grievance because Ee had filed charge against U, violative)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**

2581-3384—Cont.

(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-6700 Basis for union action or failure to act

2581-6733 Permissible considerations

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**

(U's refusal to consent to E's offer, made during discharge grievance sessions, either to reinstate w/o backpay terminated non-U Ees or to reinstate them after short suspension, and U's failure to act as advocate for Ees at grievance hearing, not unlawful; U's object was to sustain contractual hiring hall procedures and to represent all Ees rather than to give advantage to grievants over others using referral procedures; fact that grievant may suffer is not controlling, even though U's position is contrary to grievant; and U acted w/o discrimination, fairly, impartially and in good faith)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**

(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-6733-2500 Contract

Cowlitz Studd Company **JD-(SF)-141-80**

(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

2581-6733-5000 Good-faith evaluation of merits of grievance

San Francisco Web Pressmen and Platemakers' Union No. 4 (San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency) **249 NLRB No. 023**

(U's failure to carry grievance to arbitration stage of procedure not breach of duty where U conducted investigation and determined to its satisfaction that E's exertions were true, moreover it need not obtain explanation from grievant as Bd has not established that as requirement)

Gardner-Denver Company **JD-(SF)-286-80**

2581-6767 Irrelevant or invidious considerations

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

2581-6767-4300 Nepotism

Laborers' International Union of North America, AFL-CIO, Local Union No. 1320 (Dunbar & Sullivan Dredging Co.) **253 NLRB No. 058**

(U business manager's departure from numerical order on referral list to preserve his son's employment, violative)

2581-6767-5000 Nonmembership in union of unit employee

Local No. 256, International Molders' and Allied Workers' Union, AFL-CIO-CLC (United States Pipe and Foundry Company) **253 NLRB No. 133**

(failure to process grievance assertedly because Ee was not member of incumbent U, not violative where agents of U were sympathetic and helpful in providing Ee with information and forms necessary to pursue grievance; record did not sustain contentions of GC and charging party that U acted arbitratily, discriminatorily or in bad faith with respect to pursuing Ee's grievance to arbitration)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(rejection of grievance because grievant was not U member, unlawful)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(refusal to provide information about referral system to job applicant because he was not member of U and had filed charges against U and because U wanted to keep him from finding out whether he had been discriminated against by U in referral)

Exxon Company, U.S.A. **253 NLRB No. 027**

(charging service fee to nonU Ees for medical insurance coverage is *per se* violation where it was imposed for receiving term of employment for which U has bargained and which is due unit members by right)

International Chemical Workers Union, Local No. 190 (FMC Corporation) **251 NLRB No. 204**

(U which refused to process Ee's grievance to arbitration where they believed he was not good U member because he had circulated petition protesting U conduct, did not attend U meetings, and had also gone to *outside agency* violated Act)

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**

(U steward's statement to Ee that if he did not obtain U permit other Ees would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as no evidence that U sought to involve E)

United Steelworkers of America, AFL-CIO, CLC (Geraldine Shanks, an individual) **JD-464-80**

(refusal to process grievance for Ee because she was not U member violative)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

(revocation by U local's president of general president's approval of temporary assignment of Ee-prominent member of rival U-resulting in Ee taking leave w/o pay, unlawful, since revocation not to maintain contract requirement of Ee's assent to working outside his regular schedule where request was for personal reasons and revocation based on personal views of U official, notwithstanding request not signed by steward and exceeded 30 day limit on schedule changes, where general president had apparent authority to approve request, and 30 day limit was personal policy of president of division)

International Association of Machinists and Aerospace Workers, Aeronautical Industrial District Lodge 720 v. N.L.R.B. **625 F.2d 119 (C.A. 9, 1980)**

(denying *financial core* members privilege of buying unemployment stamps rather than pay full amount of dues when they were unemployed violative where only reason they were denied privilege was because they were not members)

2581-6767-7500 Intraunion activity

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**

(failure to refer member because of his support of rival of U business manager for that post and dispute over lack of receipts for dues and fees paid by his son which resulted in letter of complaint and hearing)

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**

(U's business nmanager informing E that Ee was to blame for problems among crew and causing Ee's discharge as toublemaker, unlawful, since action of business manager of rival for his post)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(U's imposition of discipline on Ees violative where true motive was to retaliate for their activities, against U leadership and for filing charges with Bd)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**

(U's refusal to reimburse elected executive board member for time he took off from work in connection with executive board meetings, violative, where U would not have treated the executive member in that manner had he not opposed positions favored by U's president and spoken unfavorably of U's president and persons with whom the president considered himself associated)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**

2581-6767-7500—Cont.

(U's failure, contrary to long-standing practice, to ask E to excuse member of U executive board for time he took off from work in connection with executive board meetings, violative, where U would not have failed to ask for the excuse had the executive board member not opposed positions favored by U president)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-576-80**
(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9)**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

2581-6767-7600 Delinquency in dues or other monies owed to union

International Longshoremen's Association, Local 1414 **JD-357-80**
(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

2581-6767-7800 Failure to follow union rules or procedures

GAIU Local 13-B, Graphic Arts International Union (Western Publishing Co., Inc.) **252 NLRB No. 130**
(rule instituted by U as bargaining tactic against mandatory overtime which was lawfully imposed constituted unprotected partial strike and U's disciplining of its members who refused to engage in such unprotected activity, violative; Bd did not decide legality of rule if instituted to protest ULPs committed by E rather than as bargaining tactic, since no ULPs found against E, U waited 2 months after overtime ban implemented to file ULP charges and U's announcement of overtime ban contained no mention of ULPs)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(removal of Ee's name from hiring hall's *out-of-work* list precluding Ee from being dispatched in manner prescribed by contractual rules held violative where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

2581-6767-8100 Personal animosity toward employees

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(failure to refer member because of his support of rival of U business manager for that post and dispute over lack of receipts for dues and fees paid by his son which resulted in letter of complaint and hearing)

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(U's business nmanager informing E that Ee was to blame for problems among crew and causing Ee's discharge as toublemaker, unlawful, since action of business manager of rival for his post)

United Steelworkers of America, AFL-CIO, CLC (Geraldine Shanks, an individual) **JD-464-80**

2581-6767-8600 Failure to sign checkoff authorization cards

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(change in nature of work to which Ees were referred from usual work to undesirable work because of Ees' refusing to sign checkoff authorizations and filing of charges with Bd, unlawful)

2581-6767-8700 Recourse to the NLRB

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(change in nature of work to which Ees were referred from usual work to undesirable work because of Ees' refusing to sign checkoff authorizations and filing of charges with Bd, unlawful)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(refusal to provide information about referral system to job applicant because he was not member of U and had filed charges against U and because U wanted to keep him from finding out whether he had been discriminated against by U in referral)

Machinery Movers, Riggers and Machinery Erectors Local 136, Iron Workers (United Exposition Service Co., Inc.) **252 NLRB No. 058**
(refusal to allow prospective member to join U because he had filed charges against U with Bd violative)

International Chemical Workers Union, Local No. 190 (FMC Corporation) **251 NLRB No. 204**
(U which refused to process Ee's grievance to arbitration where they believed he was not good U member because he had circulated petition protesting U conduct, did not attend U meetings, and had also gone to *outside agency* violated Act)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(U's imposition of discipline on Ees violative where true motive was to retaliate for their activities, against U leadership and for filing charges with Bd)

Steelworkers, Local No. 3029 (Gardner-Denver Company) **250 NLRB No. 114**
(U president's response to inquiry of member on status of grievance in which he told member that he didn't think U should do anything for him since he had filed charge against U with Bd violative as threat to refuse to continue to represent him)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Construction Teamsters Local 216, IBT **JD-(SF)-202-80**
(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities against E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

Vulcan Fuel Corporation **JD-842-79**
(refusal of U to process grievance because Ee had filed charge against U, violative)

2590 INTERFERENCE WITH BOARD PROCEEDINGS

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**
(U president's promising that U would grant a benefit to Ee in exchange for Ee's withdrawing statement he gave to Bd, violative)

Local No. 1367, International Longshoremen's Association, AFL-CIO **JD-(NY)-48-80**
(U president's direction to U's office and agents that they insist upon presence of attorney during Bd's inquiry of charges against it before responding to any interrogatories, not unlawful, since it is established law that respondent labor organization has legitimate interest in ordering its agents not to speak with Bd agent w/o presence of its counsel concerning ULP charges filed against it)

Local No. 1367, International Longshoremen's Association, AFL-CIO **JD-(NY)-48-80**
(U president's order to rank-and-file members of U not to talk to Bd agents concerning charges against U except on advice of counsel, unlawful where this amounted to coercive intrusion upon member's freedom to assist Bd and beyond legitimate interests of U)

2595 INTERFERENCE WITH ACCESS TO BOARD

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**

2595—Cont.

(local's president accusing member witnesses of being *lying rats and bastards* at prior Bd hearing and stated that they would *get theirs*, violative, since such statements constituted implied threats of reprisals)

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**

(local's president accusing member witnesses of being *lying rats and bastards* at prior Bd hearing and stated that they would *get theirs*, violative, since such statements constituted implied threats of reprisals)

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**

(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**

(violation where at meeting of elected members of U executive board U president called dissident executive board member who filed charge with NLRB against the president a *disgrace*, indicated that filing of ULP by U officer amounted to broken commitment and meant that the officer could not be trusted)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**

(U agent's threat to bring member before U's executive board in reaction to member's use of Bd's decertification processes construed, in light of prior threats of fine and expulsion, to include intention on U agent's part to seek both fines and expulsion for member's action; while threat to expel member for filing decertification ptn is not violative, threat to fine person seeking access to Bd is, and agent's invoking of both expulsion and fines held unlawful)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**

(U agent's conditioning of threats of discipline, including use of fines, on whether or not members maintained or withdrew decertification ptn, unlawful)

2599 OTHER FORMS OF COERCIVE CONDUCT

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**

(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**

(where U refused to reimburse elected U executive committee member for time he took off from work in connection with executive board meetings, U president's stating that he caused the cut-off of the executive member's reimbursement partly because of the executive member's opposition to and attacks on U's president and persons associated with the president, violative)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**

(photographing of non-striking Ee, unlawful)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**

(where striking Ees' acts and threats of violence accompany their photographing of non-striking Ees as they left and entered plant were neither attributable nor alleged to be attributable to U, ALJ declined, contrary to GC's contention, to rely upon such acts and threats of violence in evaluating lawfulness of the photographing)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**

(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**

(pickets' recording or appearing to copy license plate numbers of Ees who crossed or sought to cross U's picket line, violative in view of accompanying unlawful acts, including threats of violence against Ees because of their refusal to join strike)

5000 UNION RULES PROVISO

5025 SCOPE OF EXEMPTION

5025-3300 Rules respecting acquisition or retention of membership

Machinery Movers, Riggers and Machinery Erectors Local 136, Iron Workers (United Exposition Service Co., Inc.) **252 NLRB No. 058**

(refusal to allow prospective member to join U because he had filed charges against U with Bd violative)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**

(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

Machinists, Lodge 727 (Lockheed-California Company, A Division of Lockheed Corporation) **250 NLRB No. 032**

(U's refusal to give effect to member's resignation violative where member willing to meet financial core membership obligation, no provision in U's constitution which restrains membership resignation, and effect of membership is to deprive member from accepting employment wherever U is involved in strike as such conduct prohibited by constitution)

5025-6700 Rules governing conduct of members

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 169**

(no violation by U member's threat to get fellow Ees for circulating decertification ptn where it could be considered threat to take lawful action under U's internal rules as well as to engage in unlawful conduct)

5025-8300 Rules governing internal procedures

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**

(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

5025-8350 Cannot be prescribed to change employer hiring policy or affect employment status

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

5050 EMPLOYEE CONDUCT REGULATED BY RULES

5050-0100 Generally

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**

(although neither cts nor Bd will judge wisdom or fairness of particular U rule, they will inquire into whether rule reflects legitimate U interests, and *if rule invades or frustrates overriding policy of labor laws the rule may not be enforced)*

5050-3300 Regulation within proviso

5050-3350 Prohibition against crossing picket line

5050-3350-2500 Primary picket lines

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**

(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**

(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**

(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

5050-3362 Prohibition against remaining on job after picket line established

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**
(enforcement of U rule prohibiting U members from working for neutral E at construction site where neutral gate established tends to frustrate national labor policy against secondary boycotts)

5050-3375 Prohibition against filing decertification or representation petition

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 169**
(no violation by U member's threat to get fellow Ees for circulating decertification ptn where it could be considered threat to take lawful action under U's internal rules as well as to engage in unlawful conduct)

5050-3385 Violation of hiring hall procedure

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U charges against and fine of member were for his solicitation of job outside of hiring hall procedures, notwithstanding intra-U charges motivated by U officer's animosity resulting from member's criticism of officer's management of U)

5050-6700 **Regulation not within proviso**

5050-6759 Prohibition against overtime work

GAIU Local 13-B, Graphic Arts International Union (Western Publishing Co., Inc.) **252 NLRB No. 130**
(rule instituted by U as bargaining tactic against mandatory overtime which was lawfully imposed constituted unprotected partial strike and U's disciplining of its members who refused to engage in such unprotected activity, violative; Bd did not decide legality of rule if instituted to protest ULPs committed by E rather than as bargaining tactic, since no ULPs found against E, U waited 2 months after overtime ban implemented to file ULP charges and U's announcement of overtime ban contained no mention of ULPs)

5050-6767 Requiring employees to sign dues checkoff authorizations

Siro Security Service, Inc. **247 NLRB No. 157**
(U demanding discharge of Ee who opposed U as bargaining representative and objected to deduction of U dues w/o his consent, unlawful)

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

5075 ENFORCEMENT OF RULES WITHIN PROVISO

5075-0100 **Generally**

5075-0125 May not be enforced through employment relationship

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**
(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

5075-0150 Membership status of employees at time of conduct

American Nurses' Association **250 NLRB No. 175**
(U's fines of members for crossing picket lines enforceable where, contrary to contention, Ees were members of U as they paid initiation fees and monthly dues, participated in U activities, accepted U benefits and some of Ees U had attempted to resign from U)

5075-0150-5000 **Unenforceable if done for conduct engaged in subsequent to resignation**

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(Us which summoned former members to appear before their executive boards for conduct (returning to work during strike) occurring after their effective resignations violative)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**
(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

5075-0150-7500 **Resignation effective when submitted**

5075-0150-7550 Unless union rule or bylaw states otherwise

Glass Workers' Local Union No. 740, Painters (Auto Glass Service Co.) **JD-(SF)-271-80**
(contention that because Ee-members were not current in their dues payments when they tendered their resignations there was no dissolution of U-membership relationship under U's constitutional provisions governing resignations and therefore U could not fine members for conduct which U rules proscribe rejected, since U had failed to timely notify Ees of constitutional restrictions on resignation and hence their resignations were effective at will)

5075-0150-8700 **Resignation effective when received**

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

5075-0162 Rules consistent with collective bargaining agreement may be enforced

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

5075-0169 Discipline inconsistent with amnesty or settlement agreement

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

5075-5000 **Forms of enforcement**

5075-5017 Fine

5075-5017-0100 **Generally**

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U charges against and fine of member were for his solicitation of job outside of hiring hall procedures, notwithstanding intra-U charges motivated by U officer's animosity resulting from member's criticism of officer's management of U)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U notified member it would refuse to accept his dues until his fine had been paid toll in view of fact member was not working for E which was party to bargaining agreement containing U security clause, and where U's Local Freight Agreement contained exclusive hiring hall procedure which required U to refer registrants w/o regard to U membership)

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**
(where U and E entered into strike settlement agreement containing *amnesty* clause and U filed charges and imposed fines against members for strike breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

5075-5017-3700 **Imposition contrary to statutory intendment**

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**

5075-5017-3700—Cont.

(enforcement of U rule prohibiting U members from working for neutral E at construction site where neutral gate established tends to frustrate national labor policy against secondary boycotts)

5075-5017-5000 Reasonableness of amount not relevant

Local Union No. 965, Operating Engineers (Elcon Pepeliners, Inc.) **247 NLRB No. 029**
(however, excessiveness or severity of such fine may nevertheless be considered in ascertaining motive, reason, and purpose for fine)

5075-5017-6700 Unenforceable as sanction against member for filing or circulating decertification, deauthorization or representation petition

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 169**
(threat that U would bring charges and assess fines against members supporting decertification effort during contract negotiations and strike, unlawful)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**

5075-5017-7200 Unenforceable as sanction against member for supporting rival union

Local Union No. 965, Operating Engineers (Elcon Pipeliners, Inc.) **247 NLRB No. 029**
(U fining member $1,000 for *failing to appear before Executive Board meeting to explain your actions while working at (E)*, violative, where *actions* were protected activities of expressing dissatisfaction at U's hiring hall practices and signing authorization card for another U; particularly where Charging Party was only member on whom fine of such large amount had been imposed and U's president had threatened him with loss of job when he affiliated with another U)

5075-5017-7500 Refusal to honor picket line

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**
(enforcement of U rule prohibiting U members from working for neutral E at construction site where neutral gate established tends to frustrate national labor policy against secondary boycotts)

5075-5025 Filing intra-union charges

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 169**
(threat that U would bring charges and assess fines against members supporting decertification effort during contract negotiations and strike, unlawful)

United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1989 (Caterpillar Tractor Company) **249 NLRB No. 123**
(Institution of internal U disciplinary proceeding against some members, selecting trial committee, and issuing formal notice of hearing on these charges because these Ee-members had appeared as witnesses and testified adversely to U's grievance in arbitration hearing held pursuant to provisions of collective-bargaining agreement, violative, notwithstanding charges were later withdrawn since Respondent took no specific action to repudiate coercive effect of its conduct)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U charges against and fine of member were for his solicitation of job outside of hiring hall procedures, notwithstanding intra-U charges motivated by U officer's animosity resulting from member's criticism of officer's management of U)

Sachs Electric Company **248 NLRB No. 092**
(U's threat to file internal U charges against U members, and filing of such charges against one of them, because they had protested and sought to vindicate their right to sign referral list at U's hiring hall, unlawful)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**
(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

5075-5033 Expulsion

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**
(threat to expel Ee-member and subsequent expulsion assertedly for permitting non-U laborer to perform U work of driving truck, unlawful, where real reason was failure of member herein and fellow member who had filed ULP charges against U, to settle and withdraw such charges at U official's request, as evidenced by Ee-member's involvement in fellow member's filing of charges, timing of unprecedanted expulsion, and U official's full participation in expulsion proceeding w/o making any effort to get U steward to drop intra-U charges against member herein)

5075-5033-3300 Refusal to honor picket line

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(Us which summoned former members to appear before their executive boards for conduct (returning to work during strike) occurring after their effective resignations violative)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

5075-5033-5000 Enforceable as sanction against member for filing decertification or representation petition

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**

5075-5033-7500 Enforceable as sanction against resigned member for crossing picket line

Glass Workers' Local Union No. 740, Painters (Auto Glass Service Co.) **JD-(SF)-271-80**
(imposing fines on Ee-members who had duly resigned from U for their post-resignation crossing of picket line and working at shops at which U was on strike, violative)

5075-5050 Threats

Sachs Electric Company **248 NLRB No. 092**
(U's threat to file internal U charges against U members, and filing of such charges against one of them, because they had protested and sought to vindicate their right to sign referral list at U's hiring hall, unlawful)

5075-5050-0100 Generally

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

5075-5050-5000 Charges by union against member if he resorts to or is involved in Board processes

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**
(threat to expel Ee-member and subsequent expulsion assertedly for permitting non-U laborer to perform U work of driving truck, unlawful, where real reason was failure of member herein and fellow member who had filed ULP charges against U, to settle and withdraw such charges at U official's request, as evidenced by Ee-member's involvement in fellow member's filing of charges, timing of unprecedanted expulsion, and U official's full participation in expulsion proceeding w/o making any effort to get U steward to drop intra-U charges against member herein)

5075-5076 Removal from job

Siro Security Service, Inc. **247 NLRB No. 157**

5075-5091 Denial of membership

5075-5091-0100 Generally

Machinery Movers, Riggers and Machinery Erectors Local 136, Iron Workers (United Exposition Service Co., Inc.) **252 NLRB No. 058**
(refusal to allow prospective member to join U because he had filed charges against U with Bd violative)

5075-5098 Denial of benefits

International Association of Machinists and Aerospace Workers, Aeronautical Industrial District Lodge 720 v. N.L.R.B. **625 F.2d 119 (C.A. 9, 1980)**
(denying *finanical core* members privilege of buying unemployment stamps rather than pay full amount of dues when they were unemployed violative where only reason they were denied privilege was because they were not U members)

5085 PROHIBITION AGAINST EMPLOYEES' USE OF UNION BULLETIN BOARD

Teamsters Local 515 (Roadway Express, Inc.) **248 NLRB No. 020**
(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

542 UNION COERCION OF EMPLOYER IN SELECTION OF REPRESENTATIVES

0100 GENERALLY

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**

0125 SCOPE OF PRESCRIPTION

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(absent an apparent and immediate threat to Ee safety which might justify a work stoppage or other action either under Sec. 502 of Act or as a matter of general equity, a U, whatever its motivation, cannot by restraint and coercion force E to select or remove its representative for purposes of collective bargaining or adjustment of grievances)

0125-9000 Preserves employer's right to select representative

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(placing supervisor, who had been lawfully suspended from membership year ago for nonpayment of dues, on list of members suspended and only other name on list was supervisor suspended for working behind picket line, violative, since placement of former on list created impression he, too, was suspended for refusing to honor picket line and thereby interfering with ability of E to obtain supervisors from among U members)

3300 FORMS OF RESTRAINT OR COERCION AND THREATS THEREOF

3333 ON EMPLOYER

3333-1700 Strike or work stoppage

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

3333-3300 Picketing

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

3333-5000 Physical violence

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

Local 295, Teamsters (International Customs Services, Inc.) **JD-(SF)-81-80**

3333-7500 Requesting discharge or replacements

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection of his representative for purposes of collective bargaining or adjustment of grievances)

3367 ON REPRESENTATIVE

3367-0100 Generally

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**
(international's remission of fines imposed by U against supervisor-members for discharging Ee-member did not moot finding herein that U's conduct was unlawful, since supervisors were given no assurance by international that they would not be retried for conduct for which they were fined; supervisors expended time, money, and effort in defending themselves; guilty findings against them remained in U records; effect on E has not been remitted; and international remitted fines after reviewing the matter while ULP proceedings were pending)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(where supervisor-member's ownership interest in E was only 4 percent, U was not free to fine the supervisor-member since supervisor-member's interest was not so substantial as to make him an E)

3367-3300 Refusal to meet with designated representative

Local 295, Teamsters (International Customs Services, Inc.) **JD-(SF)-81-80**
(violation, where U conditioned bargaining on physical withdrawal of E's counsel and threat implemented by picketing E which precipitated withdrawal of counsel resulting in disadvantage of counsel having to communicate with both U and company negotiators by telephone and E being able to consult with its counsel only during recesses)

3367-5000 Coercive tactics to cause removal

Local 295, Teamsters (International Customs Services, Inc.) **JD-(SF)-81-80**
(violation, where U conditioned bargaining on physical withdrawal of E's counsel and threat implemented by picketing E which precipitated withdrawal of counsel resulting in disadvantage of counsel having to communicate with both U and company negotiators by telephone and E being able to consult with its counsel only during recesses)

3367-6700 Internal union discipline to enforce adherence to union authority

3367-6701 Generally

3367-6701-5000 Discipline for performing nonsupervisory work during work stoppage

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**

3367-6701-5000—Cont.

(suspension of 2 supervisors for performing rank-and-file work during strike violative where neither supervisor performed sufficient rank and file work to remove them from Act's protection)

3367-6701-5033 Substantiality of work performed

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U business manager's preferring charges against supervisor-member of U for crossing picket line and performing bargaining unit work during strike, violative, where supervisor-member spent only minimal amount of time performing the work)

3367-6701-5067 Nature of work performed

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB 908 (1974)*, distinguished)

3367-6708 Summoning representative to appear before union executive board

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**

3367-6717 Disciplinary charges

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**
(U's conduct in bringing charges against supervisor who was E's representative for purpose of resolving grievances, subjecting him to trials, and fining him on one charge for violating U's constitution, unlawful; to hold otherwise would permit U to ensure contracts would be interpreted as it sees fit by, first, seeking arbitration of grievances which could not be resolved and, second, ensuring that no disputes arise by pressuring supervisors by means of internal discipline, thereby inhibiting supervisor from disagreeing with U's interpretation of contract and working conditions)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(violation where U tried and fined supervisor-member for crossing picket line and performing unit work during strike; supervisor-member spent only minimal amount of time performing work)

3367-6750 Fines

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB 908 (1974)*, distinguished)

Glass Workers' Local Union No. 740, Painters (Auto Glass Service Co.) **JD-(SF)-271-80**
(imposing fines on supervisor members who had duly resigned from U for their post-resignation crossing of picket line and performing more than minimal amount of rank-and-file work, violative)

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**
(U unlawfully restrained and coerced E in its selection and retention of supervisors-members as its grievance adjusters by authorizing proceedings against supervisor over their exercise of supervisory duties and fundtions on behalf of E in discharging Ee-member, by bringing them to trial on Ee's charges, by issueing decision finding supervisors guilty of violation of international's constitution, by fining them for discharging Ee, and by petitioning international for apporval of its actions; moreover, fact that international remitted fines did not render case moot)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony,* violative, where *his decisive role* and *written testimony* were what he did in his supervisory capacity)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U's fining supervisor-member for failing to perform scheduled picket duty during strike against E, violative, since supervisor-member was E's only Section 8(b)(1)(B) representative and his compliance with U's order would have deprived E of supervisor-member's services as job superintendent)

3367-6758 Removal from job

Local No. 1367, International Longshoremen's Association, AFL-CIO **JD-(NY)-48-80**
(U's deprivation of gang foreman of his post, not unlawful since he had failed to follow lawful seniority system that U had established to give better jobs to more senior workers)

3367-6767 Suspension

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(suspension of 2 supervisors for performing rank-and-file work during strike violative where neither supervisor performed sufficient rank and file work to remove them from Act's protection)

3367-6799 Other disciplinary action

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(violation where local's president removed U member from golf team for reason that as supervisor he had issued disciplinary notice to rank-and-file member of U)

6700 REPRESENTATIVES AFFECTED

6725 FOR COLLECTIVE BARGAINING

6725-3300 Employer association

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors,* 559 F.2d 222)

6725-5000 Employer's bargaining agent

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(supervisor found sufficiently involved in negotiating process to be protected by Act where his job was to instruct principal negotiators of effect of various proposals)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that charging party, E's bargaining representative, was equitably barred in instant 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since *clean hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection of his representative for purposes of collective bargaining or adjustment of grievances)

Local 295, Teamsters (International Customs Services, Inc.) **JD-(SF)-81-80**
(labor counsel)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

6750 FOR ADJUSTMENT OF GRIEVANCES

6750-3300 Supervisors

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

6750-3300—Cont.

(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection of his representative for purposes of collective bargaining or adjustment of grievances)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony*, violative, where *his decisive role* and *written testimony* were what he did in his supervisory capacity)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(violation where local's president removed U member from golf team for reason that as supervisor he had issued disciplinary notice to rank-and-file member of U)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**
(U's conduct in bringing charges against supervisor who was E's representative for purpose of resolving grievances, subjecting him to trials, and fining him on one charge for violating U's constitution, unlawful; to hold otherwise would permit U to ensure contracts would be interpreted as it sees fit by, first, seeking arbitration of grievances which could not be resolved and, second, ensuring that no disputes arise by pressuring supervisors by means of internal discipline, thereby inhibiting supervisor from disagreeing with U's interpretation of contract and working conditions)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U business manager's preferring charges against supervisor-member of U for crossing picket line and performing bargaining unit work during strike, violative, where supervisor-member spent only minimal amount of time performing the work)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U's fining supervisor-member for failing to perform scheduled picket duty during strike against E, violative, since supervisor-member was E's only Section 8(b)(1)(B) representative and his compliance with U's order would have deprived E of supervisor-member's services as job superintendent)

6775 POTENTIAL REPRESENTATIVES

6775-0100 Generally

6775-0150 Future representative resources of employer entitled to protection

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(placing supervisor, who had been lawfully suspended from membership year ago for nonpayment of dues, on list of members suspended and only other name on list was supervisor suspended for working behind picket line, violative, since placement of former on list created impression he, too, was suspended for refusing to honor picket line and thereby interfering with ability of E to obtain supervisors from among U members)

6787 FUND TRUSTEES

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

7500 REPRESENTATIVE'S ACTION FOR WHICH DISCIPLINED

7533 PERFORMANCE OF RANK-AND-FILE WORK

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB* 908 *(1974)*, distinguished)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(violation where U tried and fined supervisor-member for crossing picket line and performing unit work during strike; supervisor-member spent only minimal amount of time performing work)

7567 PERFORMANCE OF SUPERVISORY DUTIES

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**
(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony*, violative, where *his decisive role* and *written testimony* were what he did in his supervisory capacity)

7587 DISREGARD OF SENIORITY RULES

Local No. 1367, International Longshoremen's Association, AFL-CIO **JD-(NY)-48-80**
(U's deprivation of gang foreman of his post, not unlawful since he had failed to follow lawful seniority system that U had established to give better jobs to more senior workers)

548 UNION CAUSATION OF EMPLOYER DISCRIMINATION

0100 GENERALLY

0125 NATURE AND SCOPE OF PROSCRIPTION

0125-6000 Actions must tend to encourage or discourage union membership

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**

(causing E to discharge Ees because Ees had withdrawn their membership in U and had not been referred through U's nonexclusive hiring hall, violative, where such action created presumption that desired effect was to encourage U membership and wasnot shown to have been essential to effective performance of U's representation of its constituency)

0125-7000 Specific proof of intent not required where conduct inherently destructive of employee rights

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

(specific evidence of intent to encourage U membership not essential; *U violates 8(b)(1)(A) and (2) of Act if it or its agent adversely affects Ee's job for purely personal or arbitrary reasons*)

0125-7500 Not every form of interference prohibited though tending to encourage membership

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**

(in same way that E, unmotivated by intent to discourage U membership, may make decisions having foreseeable effect of discouraging U membership, so also may U make decisions reasonably calculated to further welfare of all Ees it represents, non-U as well as U, even though foreseeable result of decision may be to encourage U membership)

0150 FINDING OF 8(a)(3) VIOLATION NOT PREREQUISITE TO 8(b)(2) FINDING

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

(*finding of violation of 8(b)(2) of Act by U's causing E to alter working conditions for arbitrary reasons does not mandate finding per se violation of 8(a)(3) by E*)

2000 FORMS OF PRESSURE

2075 COURT ACTION OR ARBITRATION

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**

(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....*scab*)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**

(U filing Section 301 suit to compel arbitration of grievance alleging that E had misclassified Ee who had crossed picket line at higher grade than that for which he qualified, unlawful, since suit was in pursuit of unlawful objective where filing of grievance was in retaliation for crossing picket line rather for protection of wage structure)

2091 PICKETING

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**

(U's picketing of E not violative where not for recognitional purposes and evidence does not establish that U does not have majority support)

4000 MEANS OF ATTEMPTING TO CAUSE DISCRIMINATION

4001 GENERALLY

4001-5000 Where illegal agreement or practice exists

Eldorado Manufacturing Corporation **249 NLRB No. 088**

(no express demand by U steward for discharge of Ees was required, since steward's threat to quit if Ees, who were antagonistic to him, were not discharged was sufficient)

4020 EXECUTION OR MAINTENANCE OF AGREEMENTS CONTAINING ILLEGAL PROVISIONS

4020-2000 Hiring and employment provision

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**

(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments*, U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

4020-3000 Revocation of checkoff

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**

(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

4020-4000 Union membership requirements

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**

(execution of contract containing U-security clause when U did not represent uncoerced majority of Ees, violative, notwithstanding subsequent deletion of such clause)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

(enforcement of agreement with security clause where U did not have majority, unlawful)

Baine Service Systems, Inc. **248 NLRB No. 087**

(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

Actors' Equity Association **247 NLRB No. 172**

(U's maintenance of disparate dues requirement for non-resident aliens, in conjunction with its U security agreements, held not per se unlawful; however, such disparate dues structure is presumptively invalid since discrimination based on alienage is inherently suspect, and burden is on those seeking to justify it to show that reasons for such discrimination overcome policy against it)

4020-8000 Seniority provisions

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO **253 NLRB No. 091**

(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

4080 DEMAND FOR DISCRIMINATORY TREATMENT (SEE 548-6000)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**

(although maintaining integrity of U's established trademark which has purpose of promoting employment of U members under U conditions is protected, withholding U seal for unlawful objectives is not privileged)

6000 MEANS OF CAUSING OR ATTEMPTING TO CAUSE DISCRIMINATION

6001 GENERALLY

548-UNION CAUSATION OF EMPLOYER DISCRIMINATION

6001-1200 'Causal' link between union and employer's action

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**

(causing termination of Ee, suspended from local, from film crew because of U's threats to withhold U seal from finished film, violative, where E would have retained Ee irrespective of his lack of membership in local had not U threatened retaliatory action)

6001-1250 In absence of specific demand upon employer

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**

(U steward's statement to Ee that if he did not obtain U permit other Ees would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as no evidence that U sought to involve E)

6001-5000 Employer acquiesence in union conduct

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**

(requesting Ees discharge for nonpayment of dues, w/o adequately informing her of her financial obligations to U, violative)

6001-6200 Employer knowledge of union motive

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

6010 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT ENTERED INTO BY MINORITY UNION

Campus Housekeeping, Inc. **252 NLRB No. 072**

(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

(enforcement of agreement with security clause where U did not have majority, unlawful)

6015 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT ENTERED INTO BY ASSISTED UNION

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

(E and assisted U's inclusion of U security provision in their agreement, not unlawful, notwithstanding agreement itself was unlawful because U lacked majority status at time of execution, where there was no proof that the provision was ever enforced or any Ee discriminated against by its application)

6030 HIRING AND EMPLOYMENT AGREEMENTS AND PRACTICES

6030-0100 Generally

Plumbers, Local Union No. 577 (Catalytic, Inc. and Pullman, Inc.) **JD-221-80**

(exclusive referral system established by fact that Es under contract with U are obliged to, and in practice, do obtain all Ees of plumbing and pipefitting craft by referral from or clearance with U)

6030-3300 Illegal provisions or arrangements

6030-3301 Generally

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**

(GC's contention that contract amendment, made as result of Bd's Royal Composing Room decision and modifying hiring hall provisions so as to comply with such decision, failed to conform thereto because amendment stated that appendix containing names of higher contract priority Ees will be prepared but no such list was forthcoming, rejected; such requirement was merely a ministerial act, and U's failure to complete mechanics of preparing list did not in any way affect substantive terms of amendment nor determine those Ees who had higher contract priority)

6030-3320 In referral

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(delay in giving test which was required before referral would be made violative as test only required for nonmembers)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(while setting up categories for referrals based on experience in trade or working for particular employers not violative, automatic placement of nonmembers in lowest category is violative)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(testing of nonmembers in such manner as to result in their discrimination versus members, violative)

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**

(U which charged Ees monthly referral fee for participation in its hiring hall violated Act where it never effectively operated referral hall and purpose of fee was to make money for U)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**

(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, nor does use of subjective criteria in referral such as financial need necessarily reflect discriminatory motive and violative per se, provided such criteria subordinated to overall established objective system)

Plumbers, Local Union No. 577 (Catalytic, Inc. and Pullman, Inc.) **JD-221-80**

(even if nonmember had visited U's hiring hall to seek referral to job with specific E, U did not unlawfully refuse to give him such referral where at time in question U made no referrals to E at which nonmember sought employment and, in any event, he would not have been eligible for referral since he retained his employment with another E)

6030-3330 Preference to union members and/or members of local

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**

(causing Ee not to be hired, violative, where U which ran nonexclusive hiring hall told E not to hire members of rival Us)

International Photographers of the Motion Picture Industry, Local 659, et al.(Medway Productions, Inc.) **250 NLRB No. 052**

(U violated 8(b)(2) and 1(A) where under its preferential hiring agreement requiring new hires to have previous work experience with an E signatory to U contract, it refused to clear qualified applicants for employment as cameramen because they lacked U membership)

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**

(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments*, U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

6030-3335 Preference to union officers

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**

(placing U leaders at top of out-of work list, unlawful, since not justified by representational needs where their presence not required in work place)

6030-3340 In selection for hiring

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**

(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments*, U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

6030-3360 In continued employment

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**

(causing E to discharge Ees because Ees had withdrawn their membership in U and had not been referred througn U's nonexclusive hiring hall, violative, where such action created presumption that desired effect was to encourage U membership and was not shown to have been essential to effective performance of U's representation of its constituency)

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**

(causing E to select for layoff Ees identified as supporters in U election of U member running against incumbent U official for latter's office, unlawful)

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**

6030-3360—Cont.

(waiver required to be signed by casual Ees as condition of employment, which provided that casual Ees can be replaced by Ees with greater contract priority, not unlawful, since waiver did not in any way distinguish between U members and non-members nor did it provide for any preference based upon membership in U, moreover, purpose of waiver was not to encourage or discourage U membership, but rather to avoid disappointment and litigation by casuals in event they were displaced by Ees with greater contract priority)

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**
(application of waiver required to be signed by casual Ees as condition of employment, which provided that casuals can be replaced by Ees with greater contract priority, not unlawful, where GC failed to establish whether waivers were executed by U or non-U casuals and to introduce evidence establishing that U casuals were not required to sign waiver; even if all waivers had been executed by non-U casuals, it would not have established unlawful discrimination since U can not be faulted if U casuals failed to apply for work and only non-U casuals were hired)

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**
(where casual Ees were required to sign waiver as condition of employment, which provided that casual Ees can be replaced by Ees with greater contract priority, Bd rejected GC's contention that E unlawfully hired Ees through hiring hall w/o requiring them to sign waiver; all Ees hired were those with contract priority and were not required to sign waivers which was limited to casual Ees)

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**
(GC's contention that any requirement that casual Ees sign waiver as condition of employment, which provided that casuals can be replaced by Ees with greater contract priority, was unlawful, rejected; while Bd's decision in Royal Composing Room found hiring hall procedures unlawful because they inherently discriminated in favor of U members over non-members, hiring hall provisions were amended since then to conform to Bd's decision; although agreement to do so was not signed, amendment became effective after posting and publication, and parties are bound by terms agreed upon notwithstanding failure to sign agreement)

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**
(GC's contention that waiver required to be signed by casual Ees as condition of employment, which provided that casuals can be replaced by Ees with greater contract priority, was unlawful because waiver language did not specifically set forth that Ee could be displaced only by Ees with higher contract priority qualifications, rejected, where waiver contained reference to existing contract between parties which, read in conjunction therewith, made waiver lawful)

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**
(ALJ rejected GC's contention that, assuming hiring hall procedures provided by amendment of contract to conform to Bd's Royal Composing Room decision dealing with preferential hiring were followed, amendment still failed to correct unlawful provision because higher contract priority Ees may have obtained such priority through prior unlawful agreement and would continue to enjoy fruits gained thereby, thus tainting any hire of higher contract priority Ee entitling him to bump casual Ee; no such bumping occurred, and GC's contention failed to make valid comparison between U and non-U casuals)

United Electrical, Radio & Machine Workers of America, Local 262 (Hemisphere Broadcasting, Inc.) **JD-437-80**
(U unlawfully attempted to cause and did cause discharge of nonmember of U by threatening to continue engaging in strike unless E terminated him because he did not support U's strike; and subsequently, when Ee was ostensibly terminated but retained by E through another E who was *cover* for E herein, by threatening to resume strike unless Ee was terminated; U's defense, based on strike settlement agreement, that it was concerned with protecting jobs of Ees under former ownership before operation was acquired by E, rejected)

6030-3380 Union control over hiring and employment

6030-3380-3300 Union stewards

Laborers' International Union of North America, AFL-CIO, Local Union No. 1320 (Dunbar & Sullivan Dredging Co.) **253 NLRB No. 058**
(U's selection of Ees to be laid off unlawful, where motivated by desire to maintain employment for two job stewards even though their presence at jobsite was unnecessary at time of layoff)

District Council No. 2 of The Brotherhood of Painters and Allied Trades, AFL-CIO (The Paintsmiths, Inc.) **253 NLRB No. 017**
(U's causing E, in violation of Sec. *8(a)(3)* of Act, to lay off regular Ee by enforcing contractual, *appointment-of-steward clause* held violative where U had not made requisite showing of legitimate and substantial reasons for exercising its *appointment-of-steward* power)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(U's exercise of appointment of steward power which caused layoff of regular Ee violative absent legitimate and substantial reasons for doing so)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(U's purpose in placing steward on job is presumptively legitimate)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(*steward preference* clauses are facially valid; however, selecting steward from outside Ee ranks will require substantial showing that workers E already has on job are not competent to carry out steward functions)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(*broad* appointment-of-steward clause which authorizes U to select stewards from outside regular force may be presumptively valid if steward is placed on jobsite at beginning of project w/o causing layoff that would demonstrate U's power over Ee and its ability to affect his livelihood)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(fact that E did not notify U of job's commencement coupled with one Ee's violation of a work rule does not give rise to *substantial* reason for invoking appointment-of-steward clause which caused layoff of Ee)

6030-3380-5000 Competency tests and apprenticeship requirements

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**
(GC's contention that journeyman's test given referral applicants for electricians' jobs was unfair and discriminatory, rejected, where electrician with considerable experience testified test was fair notwithstanding his failure to pass test; GC's attempt to introduce other examinations into evidence to show that, perhaps, instant examination was more difficult held entirely irrelevant in view of electrician's testimony)

6030-3390 Coercing employer to discriminate in employment

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(causing E to select for layoff Ees identified as supporters in U election of U member running against incumbent U official for latter's office, unlawful)

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(U's conduct in causing discharge of Ees, and E's discharge of Ees at U's request, unlawful, where U steward in requesting discharges was motivated by harassment flowing from Ees' continual accusation of steward's failure to adequately perform his steward's duties, their insistence on prompt grievance meetings, and attempt to unseat him as steward; moreover, even if no intraunion retaliation motivated steward in demanding discharges, but only that personal harassment was no longer bearable, U's demands for discharges would neverthерless be unlawful)

N.L.R.B. v. Tid-Bit Products Company, et al. **620 F.2d 581 (C.A. 6, 1980)**
(attempting to cause and causing E to post Ee's job for bids, with clearly foreseeable result that she would be laid off because of initiating grievance proceedings, unlawful)

6030-6700 Discrimination in application of valid provisions and agreeements

Classic Truck Rental Corp. **251 NLRB No. 056**
(refusal by E and U to permit drivers' helpers to become U members or to apply to them terms and conditions contained in drivers' contract, not unlawful, where U did not represent helpers or anyone else described in contract's boiler-plate preamble, helpers were outside unit and therefore U had no obligation to represent them nor any obligation to insist that E extend contract provisions to them; similarly, E had no obligation to extend contract's wage scale or other benefits to helpers or any other Ees outside unit)

6030-6701 Generally

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, not does use of subjective criteria in referral such as financial need necessarily reflect discriminatory motive and violative per se, provided such criteria subordinated to overall established objective system)

6030-6712 In registration for referral

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against non-

6030-6712—Cont.

members, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

Local Union No. 948, Electical Workers (Lawrence Moore, an Individual) **253 NLRB No. 094**

(violation where, because it wanted to keep jobs with most overtime for its own members, local U refused to let *travellers* from another jurisdiction stay on its out-of-work list to wait for overtime jobs as they should have been under contract provision)

Sachs Electric Company **248 NLRB No. 092**

(refusal by U administering hiring hall under exclusive referral agreement to permit members of sister Us to sign referral list, unlawful)

6030-6725 In referral

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**

(U's requirement that nonmember applicants for referral under exclusive hiring hall contract complete complex and lengthy application for referral questionnaire form, not unlawful, where form was used to check out veracity of applicants' statements as to their qualifications, which E had recommended that they falsify in order to become U members and be referred for jobs with E; there was no showing that U had discriminatory motive in using form but, rather, that it was used to ensure lawful operation of hiring hall and prevent false information from being used by applicants for gaining preferred status)

6030-6725-0100 Generally

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**

(no animus on part of U toward nonmember referral applicants was shown by U official's temperamental outbursts on the job against Ees which included applicants, where evidence did not show that outbursts were addressed solely to non-U Ees but that official's hostility was not related at all to issues of employment but to Ees' incompetence on job; moreover, official in no way controlled referral of Ees or acted as U agent in impeding nonmembers' access to referral)

6030-6725-0800 Requiring non-members to pay referral fees not reasonably related to services

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**

(requirement that nonmembers pay fee to help support operation of exclusive hiring hall, unlawful where U actually operated referral system for members only; whether or not U actually operated exclusive hiring hall, rather than whether or not contract permitted it do so, was determining factor)

6030-6725-1200 Requiring referral fees not reasonably related to operation of hiring hall

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**

6030-6725-1700 Preference to union members

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**

(U's preference for referral of members over non-members in response to requests from Es not unlawful since hiring hall is not exclusive, either by contract or practice, notwithstanding number of members obtained all their employment through hiring hall, where language in agreement states *in the event any E should use the services of U to secure ... Ees* is clearly permissive and Es obtained Ees from other sources)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(testing of nonmembers in such manner as to result in their discrimination versus members, violative)

6030-6725-2500 Priority based on service with employer

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(while setting up categories for referrals based on experience in trade or working for particular employers not violative, automatic placement of nonmembers in lowest category is violative)

6030-6725-4200 Refusal to refer because of nonmembership

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**

(U's refusal to register non-U Ees whom E had terminated pursuant to scheme whereby Ees would become U members and thus become available for referral back to E under lawful exclusive hiring hall contract, not unlawful, since U's motivation was to support and maintain hiring hall procedures against E's attempt to circumvent them and thereby give Ees referral preference over persons who might thereafter be out of work and legitimately on referral list)

Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) **248 NLRB No. 174**

6030-6725-4300 Refusal to refer because of collective bargaining agreement

Local 873, Electrical Workers (Kokomo-Marian Division, Central Indiana Chapter, National Electrical Contractors Association, Inc.) **250 NLRB No. 113**

(refusal to refer U member who was rightfully terminated from apprenticeship program not violative where collective-bargaining agreement provided that only journeyman or participants in training program could be referred; thus, presumption that U's action of refusing to refer U member will tend to coerce other members as a display of U power rebutted)

6030-6725-4800 Refusal to refer because of membership in or registration with sister local

Local Union No. 948, Electical Workers (Lawrence Moore, an Individual) **253 NLRB No. 094**

(violation where, because it wanted to keep jobs with most overtime for its own members, local U refused to let *travellers* from another jurisdiction stay on its out-of-work list to wait for overtime jobs as they should have been under contract provision)

6030-6725-5000 Refusal to refer because of opposition to union leadership

Sheet Metal Workers International Association, Local Union No. 20, AFL-CIO (The Employers Association of Sheet Metal Workers, etc.) **253 NLRB No. 018**

(refusal to refer Ee for work according to first-in-first-out rule of referral from register, not unlawful since refusal was not motivated discriminatorily by Ee's running for office or testifying against U at Bd hearing, as alleged, where refusal was remote in time from Ee's protected activity, U referred Ee after protected activity, Ee told U he would not be available for certain types of referral, and U did not require Ee to file withdrawal card from its hiring hall although he was also being referred out of another hiring hall)

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**

(failure to refer member because of his support of rival of U business manager for that post and dispute over lack of receipts for dues and fees paid by his son which resulted in letter of complaint and hearing)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(refusal to refer members because of their opposition to U officials violative)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(expelling and suspending disident members violative where result was denial of employment since all hiring was done through U hiring facilities)

Carpenters and Joiners, Local No. 1914 (W & H Conveyor Systems, Inc.) **250 NLRB No. 182**

(refusal to refer properly qualified and registered member of exclusive hiring hall, unlawful, where U official disregarded referral provisions of contract and refused to dispatch member, who was requested by signatory E, because of member's opposition to official's administration of U)

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9)**

(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

6030-6725-5700 Refusal to refer because of criticism of referral system

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**

(refusal to refer members who protested hiring hall operation policies (particularly selection methods employed by U officials operating hall) at U meetings, to local and International, to NLRB and other government agencies)

6030-6725-5900 Refusal to refer because of failure to complete examination successfully

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**

(GC's contention that journeyman's test given referral applicants for electricians' jobs was unfair and discriminatory, rejected, where electrician with

6030-6725-5900—Cont.

considerable experience testified test was fair notwithstanding his failure to pass test; GC's attempt to introduce other examinations into evidence to show that, perhaps, instant examination was more difficult held entirely irrelevant in view of electrician's testimony)

6030-6725-9100 Refusal to refer because of charges filed with Board or other governmental bodies against union

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**
(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

6030-6725-9200 Refusal to refer because of testifying at Board proceeding

Sheet Metal Workers International Association, Local Union No. 20, AFL-CIO (The Employers Association of Sheet Metal Workers, etc.) **253 NLRB No. 018**
(refusal to refer Ee for work according to first-in-first-out rule of referral from register, not unlawful since refusal was not motivated discriminatorily by Ee's running for office or testifying against U at Bd hearing, as alleged, where refusal was remote in time from Ee's protected activity, U referred Ee after protected activity, Ee told U he would not be available for certain types of referral, and U did not require Ee to file withdrawal card from its hiring hall although he was also being referred out of another hiring hall)

6030-6750 In selection for hiring or work on job

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**
(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where E cancelled request for dispatch of member absent evidence U engaged in conduct designed to cause E to refuse to employ member; notwithstanding U's secretary-treasurer's animosity towards member, fact E and U were engaged in negotiations, and statement of E's superintendent that orders for cancellation had come *from above*)

6030-6762 In conditions of employments

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where during period there was in effect U's unlawful order to approve no requests for change in schedule--because of pending ULP charge against it alleging discriminatory refusal of such request--U disapproved Ees' request for changes in schedule pursuant to said order)

6030-6762-5000 Seniority position

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's experience)

General Grocer Company **JD-591-80**
(E's and U's action in changing system by which truckdrivers bid, on basis of seniority, for assignments to E's city run deliveries, not unlawful, since U's conduct, following its acquiescence to E's desire to change bidding system for economic reasons, was neither arbitrary, capricious, nor in bad faith, inasmuch as U justifiably viewed its position as effort, under agreement with E, to regain lost rights of its old members as opposed to rights of its members who had transferred from sister local)

6030-6762-5050 Overtime work

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-576-80**
(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

6030-6762-5075 Shift

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(revocation by U local's president of general president's approval of temporary assignment of Ee-prominent member of rival U-resulting in Ee taking leave w/o pay, unlawful, since revocation not to maintain contract requirement of Ee's assent to working outside his regular schedule where request was for personal reasons and revocation based on personal views of U official, notwithstanding request not signed by steward and exceeded 30 day limit on schedule changes, where general president had apparent authority to approve request, and 30 day limit was personal policy of president of division)

6030-6775 In continued employment

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

Local 889, Laborers' International Union of North America, AFL--CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(U's business nmanager informing E that Ee was to blame for problems among crew and causing Ee's discharge as toublemaker, unlawful, since action of business manager of rival for his post)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(violation, where U's secretary-treasurer informed E one day before member who was Ee of E was to achieve seniority under Local Agreement and become permanent Ee of E that member had been dispatched to E in violation of Agreement and that E should be using another of its members, where dispatch had been in accordance with hiring procedures of Agreement and in view of U's secretary-treasurer's antagonism to member, notwithstanding no threats made)

Peoria Newspaper Guild, Local 86 (Peoria Journal Star) **248 NLRB No. 028**
(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

Moser Brothers Welding, Inc. **JD-(NY)-38-80**
(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's attempt to cause lay off of Ee who was leader in decertification campaign, unlawful, where, after threatending to *have* Ee's job, agent telephoned E in attempt to cause E to lay off Ee who had knowledge of incident, and unlawful motive was evident from agent's hostility towards Ee's leadership in decertification campaign; moreover, GC met his prima facie burden of proof thru parties' stipulation, and there was no evidence to satisfy U's rebuttal burden)

Cowlitz Studd Company **JD-(SF)-141-80**
(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9)**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

6030-6787 In processing grievances

Classic Truck Rental Corp. **251 NLRB No. 056**
(U's refusal to pursue Ee's grievance, not unlawful, where there was no reason for U to deny him proper representation because Ee had not yet undertaken alleged protected activity, U refused to process grievance because it concerned work which U did not consider unit work, and refusal cannot be considered either irrelevant or arbitrary when viewed in light of history of special nature of job assignment which was subject of Ee's grievance)

Detroit Diesel Allison Division, General Motors Corporation **249 NLRB No. 089**
(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

Cowlitz Studd Company **JD-(SF)-141-80**
(U which successfully obtained Ee's discharge because E had violated contract provision when it hired him did not violate act when it refused to process grievance on Ee's behalf which sought his reinstatement)

6040 ENFORCEMENT OF UNION MEMBERSHIP REQUIREMENT

6040-5000 Discriminatory application of valid requirement

6040-5050 For reasons other than failure to tender dues or initiation fees

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

Actors' Equity Association **247 NLRB No. 172**
(U's maintenance and enforcement of U security requirement that nonresident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from other members, unlawful; U's defenses to presumptive invalidity of such disparate requirement rejected, since U failed to establish any present or recent purpose for maintaining such dues other than its effectiveness in producing revenues)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

6040-7500 Maintenance-of-membership requirements

6040-7550 Resignation during contract hiatus

Peoria Newspaper Guild, Local 86 (Peoria Journal Star) **248 NLRB No. 028**
(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

6050 ENFORCEMENT OF DUES AND INITIATION FEE REQUIREMENTS

6050-3300 Illegal provisions or requirements

6050-3375 Payment through dues checkoff required

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

6050-3387 Requiring payment of excessive and/or discriminatory initiation fees

Actors' Equity Association **247 NLRB No. 172**
(U's maintenance and enforcement of U security requirement that nonresident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from other members, unlawful; U's defenses to presumptive invalidity of such disparate requirement rejected, since U failed to establish any present or recent purpose for maintaining such dues other than its effectiveness in producing revenues)

6050-6700 Discriminatory application of valid requirements

6050-6701 Generally

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**
(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

6050-6701-5000 Union obligation to inform employees of dues requirements

Local 1445, United Food and Commercial Workers (Gallahue's Supermarkets) **247 NLRB No. 151**
(U demanding discharge of Ees who had not paid U dues or executed checkoff authorizations as required by U security and checkoff agreements before U had advised Ees of their obligation under provisions, notwithstanding almost one half of Ees attended meeting at which agreement ratified)

6050-6767 Failure to inform member of obligation

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**
(requesting Ees discharge for nonpayment of dues, w/o adequately informing her of her financial obligations to U, violative)

Local 572, Teamsters (Ralphs Grocery Company) **247 NLRB No. 108**
(U's seeking and causing discharge of Ee for failing to pay dues pursuant to U-security agreement, unlawful, where U did not give Ee sufficient prior notice of her delinquency, and during Ee's conversation in U office she was not given correct amount nor reasonable opportunity to satisfy her obligation before her termination)

Local 1445, United Food and Commercial Workers (Gallahue's Supermarkets) **247 NLRB No. 151**
(U demanding discharge of Ees who had not paid U dues or executed checkoff authorizations as required by U security and checkoff agreements before U had advised Ees of their obligation under provisions, notwithstanding almost one half of Ees attended meeting at which agreement ratified)

6060 ENFORCEMENT OF SENIORITY AGREEMENTS AND PRACTICES

6060-0100 Generally

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U's business agent informed E who requested member by name that member did not qualify for dispatch by name because he did not have sufficient seniority under agreement to qualify for list from which such dispatches made)

6060-0150 Union actions may not be based on irrelevant or invidious considerations

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....*scab*)

6060-5000 Enforcement of discriminatory seniority rules

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO **253 NLRB No. 091**
(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

Teamsters, Local No. 671 (Connecticut Natural Gas Corporation) **JD-558-80**
(maintaining and enforcing contractual seniority clause according U stewards superseniority as to terms and conditions of employment beyond layoff and recall, unlawful)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**
(placing U leaders at top of out-of work list, unlawful, since not justified by representational needs where their presence not required in work place)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(U's exercise of appointment of steward power which caused layoff of regular Ee violative absent legitimate and substantial reasons for doing so)

6060-5000—Cont.

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(*steward preference* clauses are facially valid; however, selecting steward from outside Ee ranks will require substantial showing that workers E already has on job are not competent to carry out steward functions)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(fact that E did not notify U of job's commencement coupled with one Ee's violation of a work rule does not give rise to *substantial* reason for invoking appointment-of-steward clause which caused layoff of Ee)

6060-5050 Superseniority

Sheaffer Eaton Division of Textron, Inc. **251 NLRB No. 141**
(following election, E's granting U steward top seniority in permanent job classification pursuant to contract's superseniority provisions which specifically apply to *bump/layoff* status found not violative, although it resulted in his transfer from lower paying job at which he had been working while in *bump/layoff* status and bumping Ee whom he replaced who had greater job seniority into lower paying job)

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

6060-7500 Retention and accumulation of seniority while outside unit

Sign, Pictorial & Display Union, Local 230, Painters & Allied Trades (Perma Line Corp. of America) **JD-(NY)-46-80**

6075 ENFORCEMENT OF DISCRIMINATION IN TERMS OR CONDITIONS OF EMPLOYMENT

Detroit Diesel Allison Division, General Motors Corporation **249 NLRB No. 089**
(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(violation where local U's agent caused E to discharge steward for latter's failure to support business agent in U election)

6090 DISCRIMINATORY ADMINISTRATION OF INSURANCE, PENSION, AND OTHER BENEFIT PLANS

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(Bd properly dismissed complaint alleging that maintenance and enforcement of cancellation provisions of pension plan unlawfully coerced Ees in exercise of right to vote to decertify U as Ee representative in that automatic cancellation rules effectively dictated Ees' choice to vote for continued representation by U; there was no evidence in the record or from the provisions themselves of intention to violate Act; provisions, on their face and as here applied, were not discriminatory or coercive; and their impact on Ee voting rights was indirect and served a legitimate business purpose of pension fund)

8000 AFFIRMATIVE DEFENSES

8015 ACTING IN DEROGATION OF BARGAINING REPRESENTATIVE

Moser Brothers Welding, Inc. **JD-(NY)-38-80**
(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

8020 COMPLIANCE WITH CONTRACT

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO **253 NLRB No. 091**
(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U's business agent informed E who requested member by name that member did not qualify for dispatch by name because he did not have sufficient seniority under agreement to qualify for list from which such dispatches made)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-576-80**
(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

8030 COMPLIANCE WITH COURT DECREE

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**

554 UNION OBLIGATION TO BARGAIN

0100 GENERALLY

1400 NATURE AND EXTENT OF OBLIGATION AND DUTY TO BARGAIN

1401 GENERALLY

Mass & Feduska, Inc. v. N.L.R.B. **632 F.2d 714 (C.A. 9, 1980)**
(in reversing Bd's finding that U's threat to strike to compel payment by E of E's contribution to fringe-benefit trust funds on behalf two executives and sole owners of E was not unlawful refusal to bargain, ct held that the contribution was permissive subject of bargaining and bargaining agreement authorized U to strike over permissive subjects of bargaining; the two executives, although belonging to the U and performing same unit work and as such eligible for participation in the trust funds, were statutory supervisors and U could not compel E to treat them as Ees for collective bargaining purposes)

1433 MECHANICS OF BARGAINING

1433-3300 **Authority of representative**

1433-3350 Presence of persons other than conferees at bargaining sessions

1433-3350-1700 Attorneys

Local 295, Teamsters (International Customs Services, Inc.) **JD-(SF)-81-80**
(violation, where U conditioned bargaining on physical withdrawal of E's counsel and threat implemented by picketing E which precipitated withdrawal of counsel resulting in disadvantage of counsel having to communicate with both U and company negotiators by telephone and E being able to consult with its counsel only during recesses)

1433-6700 **Impasse**

1433-6725 What constitutes

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(impasse reached on *successor and assigns* clause, a mandatory subject of bargaining, where E made numerous statements that he planned to sell or lease his facilities as soon as possible, U desired to obtain immediate commitment to protect itself and Ees but E refused to make such commitment, and both sides were firmly committed to their positions)

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(vacations, holidays, sick leave, health insurance)

1433-9100 **Ratification by employees**

Local Union No. 381, Teamsters (Federal Electric Corporation) **JD-(SF)-296-79**
(valid ratification of contract where two-thirds of Ees failed to vote against ratification as required by constitution, notwithstanding votes necessary for rejection obtained when combined with second ratification vote held only for Ees who had not previously voted, since first vote determinative; U's contentions that it is for it to determine if ratification has taken place and that ratification tainted by E's interferance, rejected)

1450 SUBJECT MATTER OF BARGAINING

1450-0100 **Generally**

1450-0120 Mandatory subjects defined

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

1450-0140 Permissible or nonmandatory subjects defined

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) **252 NLRB No. 181**
(R fee clause requiring Ees who are not U members to pay pro rata service fee at rate less than monthly dues is nonmandatory subject of bargaining only in *right to work* States)

Local No. 3, Electrical Workers (Nixdorf Computer Corporation) **252 NLRB No. 082**
(modification of Bd certified unit is not mandatory subject of bargaining)

Mass & Feduska, Inc. v. N.L.R.B. **632 F.2d 714 (C.A. 9, 1980)**
(in reversing Bd's finding that U's threat to strike to compel payment by E of E's contribution to fringe-benefit trust funds on behalf two executives and sole owners of E was not unlawful refusal to bargain, ct held that the contribution was permissive subject of bargaining and bargaining agreement authorized U to strike over permissive subjects of bargaining; the two executives, although belonging to the U and performing same unit work and as such eligible for participation in the trust funds, were statutory supervisors and U could not compel E to treat them as Ees for collective bargaining purposes)

1450-0800 **Scope and work of unit**

1450-0875 Composition of unit

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's bargaining to impasse on clause that would require E, during term of contract, to agree to same contract terms for any of its other plants whose Ees selected U to bargain for them, violative, where U clause was to apply to both plants in operation at time contract was signed and plants acquired and put into production during term of contract; scope of certified bargaining unit is not mandatory subject)

1450-1600 **Remuneration and benefits**

1450-1660 Pensions and group insurance

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**
(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

1450-5000 **Union security and checkoff**

1450-5025 State law limiting or prohibiting

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) **252 NLRB No. 181**
(R fee clause requiring Ees who are not U members to pay pro rata service fee at rate less than monthly dues is nonmandatory subject of bargaining only in *right to work* States)

1450-7000 **Matters relating to nonunit employees**

Operating Engineers, Local Union No. 12; et al. (Maas & Feduska, Inc.) **248 NLRB No. 175**
(threatening to strike to force E to make payments to U's trust funds on behalf of nonunit executives and supervisors)

1450-7400 **Participation in funds to defray operating costs of benefit plans**

Mass & Feduska, Inc. v. N.L.R.B. **632 F.2d 714 (C.A. 9, 1980)**
(in reversing Bd's finding that U's threat to strike to compel payment by E of E's contribution to fringe-benefit trust funds on behalf two executives and sole owners of E was not unlawful refusal to bargain, ct held that the contribution was permissive subject of bargaining and bargaining agreement authorized U to strike over permissive subjects of bargaining; the two executives, although belonging to the U and performing same unit work and as such eligible for participation in the trust funds, were statutory supervi-

1450-7400—Cont.

sors and U could not compel E to treat them as Ees for collective bargaining purposes)

1450-7700 Trust fund provisions

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

1467 ACTS CONSTITUTING REFUSAL TO BARGAIN OR INDICATING BAD FAITH

1467-0100 Generally

1467-0155 Effect of arbitration award

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(U's alleged refusal to bargain and its insistence to point of impasse that contract between U and E's predecessor was binding on E, not unlawful, where successor E, pursuant to SCt's Wiley decision, was bound to arbitrate extent of its obligations under predecessor's contract and U's insistence on arbitration did not violate principles of SCt's Burns decision; moreover, under Wiley U was permitted to seek protection of federal cts and arbitration and, by so doing, did not violate Act)

1467-0300 Withholding information or giving misleading information

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**
(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

Abestos Workers, Local No. 80 (West Virginia Master Insulators Association) **248 NLRB No. 022**
(U's refusal to furnish information requested by E association relating to U's referral system, unlawful, since such information is clearly relevant and necessary for association to evaluate present referral practices under existing contract, to test validity of contract proposals, and to formulate future contract proposals or referrals; fact that parties were not engaged in contract negotiations is not determinative inasmuch as information regarding referrals is relevant to day-to-day administration of contract as well as to future contract negotiations)

1467-1200 Demand for bargaining in inappropriate unit

1467-1250 Broader than certified unit

Local No. 3, Electrical Workers (Nixdorf Computer Corporation) **252 NLRB No. 082**
(U's insistence, in face of E's repeated objections, that any contract negotiated must contain U recognition clause with unit proposal including additional Ee classifications and geographical variations unlawful; U's insistance constituted a demand for an expanded unit)

1467-3000 Proposals and demands

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's offering proposal which would carry forward any agreement to which E was party and preserve prior agreements between U and various Es, not violative notwithstanding E's contention that such clause violates 8(b)(1)(B) because it requires E to accept as its bargaining representative persons representating other Es who negotiated or would negotiate changes in agreement to which E was not party; U did not bargain to impasse on proposed clause)

1467-3033 Illegal and/or unreasonable provisions

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) **252 NLRB No. 181**
(insisting to impasse upon inclusion of R fee clause for non-U member Ees held violative in *right to work States)*

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

1467-3084 Pertaining to nonunit employees

Operating Engineers, Local Union No. 12; et al. (Maas & Feduska, Inc.) **248 NLRB No. 175**
(threatening to strike to force E to make payments to U's trust funds on behalf of nonunit executives and supervisors)

1467-6000 Uncompromising attitude or refusal to make concessions

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(U's persistence in demanding of successor E same fringe benefits, wage increments, dues deductions and other contract provisions it had with predecessor, not unlawful; U may not refuse to bargain on ground successor is bound to comply with predecessor; however, U is not required to offer proposals different from conditions of employment it had achieved, as long as it bargains in good faith)

1467-6600 Commission of unfair labor practices

1467-6684 Refusal to deal with employer's designated representative

Local 295, Teamsters (International Customs Services, Inc.) **JD-(SF)-81-80**
(violation, where U conditioned bargaining on physical withdrawal of E's counsel and threat implemented by picketing E which precipitated withdrawal of counsel resulting in disadvantage of counsel having to communicate with both U and company negotiators by telephone and E being able to consult with its counsel only during recesses)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's refusing to negotiate with E on individual basis, violative, notwithstanding U's claim that it believed E had designated E association as bargaining representative; E had plainly stated its intention to bargain separately with U and not to join association)

1467-7200 Refusal to sign or reduce agreement to writing

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(U's refusal to sign contract upon which parties had orally agreed as to all terms except lounge musicians' status, unlawful; after multi-E association had unlawfully refused to continue to include lounge musicians in contract with house musicians, at U's suggestion parties had continued to negotiate and reached agreement on all other terms)

Operative Plasterers' and Cement Masons' International Association of The United States and Canada, Local 526, AFL-CIO (The Builders Association of Eastern Ohio and Western Pennsylvania)

554-UNION OBLIGATION TO BARGAIN

1467-7500 Unilateral changing of terms and conditions of employment

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO **253 NLRB No. 091**
(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

Exxon Company, U.S.A. **253 NLRB No. 027**
(violation where U did not give notice to E of unilateral change in which U required nonU Ees to pay service fee for administering health insurance plan)

1467-7800 Actions to compel contract modification

Local Union No. 381, Teamsters (Federal Electric Corporation) **JD-(SF)-296-79**
(U's repudiation of contract and threatening to strike to force E to negotiate new contract, unlawful, notwithstanding U's contention no valid ratification of contract where votes necessary for rejection obtained by combining votes in second ratification vote held for those who had not previously voted with votes cast in first ratification vote, since first vote alone determinative)

1467-8700 Actions nullifying contractual arbitration proceedings

United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1989 (Caterpillar Tractor Company) **249 NLRB No. 123**
(Institution of internal U discipline against members who testified against Respondent's position in grievance procedure violative as this destroys integrity of arbitration clause in contract)

1467-9600 General refusal to bargain

1467-9650 Totality of conduct

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(colloquy during hearing on injunction sought by U against E's transfer of its facilities w/o binding transferee to U's contract, during which E alleged that it was willing to negotiate agreement but which U rejected on gound it had contract with E, did not amount to request and refusal to bargain)

1475 DUTY TO FURNISH INFORMATION

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**
(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

Abestos Workers, Local No. 80 (West Virginia Master Insulators Association) **248 NLRB No. 022**
(U's refusal to furnish information requested by E association relating to U's referral system, unlawful, since such information is clearly relevant and necessary for association to evaluate present referral practices under existing contract, to test validity of contract proposals, and to formulate future contract proposals or referrals; fact that parties were not engaged in contract negotiations is not determinative inasmuch as information regarding referrals is relevant to day-to-day administration of contract as well as to future contract negotiations)

1483 REQUIREMENTS FOR TERMINATION OR MODIFICATION OF CONTRACTS - 8(d) PROVISO

1483-2000 Notice requirements

1483-2001 Generally

1483-2001-5000 Actual notice required

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's failure to give FMCS notice of existence of dispute, violative even if, as contended by U, FMCS independently obtained *actual knowledge* of dispute from other sources; purpose of Sec. 8(d)(3) is not fulfilled when FMCS happens to find out about a dispute on its own)

1483-2067 Thirty-day notice to mediation services

1483-2067-2500 Adequacy of service

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's failure to give FMCS notice of existence of dispute, violative even if, as contended by U, FMCS independently obtained *actual knowledge* of dispute from other sources; purpose of Sec. 8(d)(3) is not fulfilled when FMCS happens to find out about a dispute on its own)

2800 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF UNION

4200 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYER

5600 MULTI-EMPLOYER BARGAINING

7000 MULTI-UNION BARGAINING

8400 AFFIRMATIVE DEFENSES

560 PROHIBITED STRIKES AND BOYCOTTS

0100 GENERALLY

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

2500 CONDUCT PROHIBITED WHEN FOR PROHIBITED OBJECT

2512 ISOLATED CONDUCT

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**

(upon seeing truck of primary, ambulatory pickets unlawfully picketed site of neutral E who repaired primary's trucks but was not ally nor were any primary Ees at neutral; picketing 20 minutes in 2 occasions held not de minimis where it ceased only after primary's truck was removed and when pickets were arrested)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(picketing at gate reserved for neutrals at jobsite, unlawful and warranted remedial order, notwithstanding involved picketing by only two pickets for one day, in view of Respondent's unlawful picketing at another jobsite at same time in connection with dispute with same E)

2550 INDUCEMENT OR ENCOURAGEMENT OF - (i)

2550-6700 To refuse to perform services

Teamsters & Auto Truck Drivers, Local No. 85 (William Volker and Company) **253 NLRB No. 089**

(U's picketing of neutral E with sign bearing E's name stating it pays less than area standards violative as attempt to induce and encourage Ees of neutral E to refuse to perform services)

Carpenters Local 316 (E & E Development Company) **247 NLRB No. 173**

(U representative refusing to tell U member whether or not he should work behind picket line of another U picketing different subcontractor than one he was working for, not unlawful since Ee never threatened with coercive U action of unspecified nature nor told that primary E was *unfair*)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

2550-8300 Forms of inducement or encouragement

2550-8333 Picketing

Teamsters & Auto Truck Drivers, Local No. 85 (William Volker and Company) **253 NLRB No. 089**

(U's picketing of neutral E with sign bearing E's name stating it pays less than area standards violative as attempt to induce and encourage Ees of neutral E to refuse to perform services)

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**

(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

2550-8384 Statements

Carpenters Local 316 (E & E Development Company) **247 NLRB No. 173**

(U representative refusing to tell U member whether or not he should work behind picket line of another U picketing different subcontractor than one he was working for, not unlawful since Ee never threatened with coercive U action of unspecified nature nor told that primary E was *unfair*)

2575 THREATENING, COERCION, OR RESTRAINT OF - (ii)

2575-3300 Any person engaged in commerce

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**

(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

2575-6700 Forms of threats, restraint, or coercion

2575-6701 Generally

Local 40, Ironworkers (Spancrete Northeast, Inc. **249 NLRB No. 112**

(fact that E's representatives were not present at meeting between competing U and representatives of contracting entity does not change violative nature of Respondent U's threat to strike E because such threat unlawfully coerces not only person threatened but also E from whom work assignment is sought)

2575-6725 Statements to employees of secondary

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**

(U steward threatening driver employed by neutral E with large rock and to report driver to U which he informed him would result in being thrown out of U and fined)

Carpenters Local 316 (E & E Development Company) **247 NLRB No. 173**

(U representative refusing to tell U member whether or not he should work behind picket line of another U picketing different subcontractor than one he was working for, not unlawful since Ee never threatened with coercive U action of unspecified nature nor told that primary E was *unfair*)

2575-6737 Imposition of monetary penalties

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**

(U steward threatening driver employed by neutral E with large rock and to report driver to U which he informed him would result in being thrown out of U and fined)

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

2575-6750 Appeals to honor picket line

Carpenters Local 316 (E & E Development Company) **247 NLRB No. 173**

(U representative refusing to tell U member whether or not he should work behind picket line of another U picketing different subcontractor than one he was working for, not unlawful since Ee never threatened with coercive U action of unspecified nature nor told that primary E was *unfair*)

2575-6767 Picketing

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**

(upon seeing truck of primary, ambulatory pickets unlawfully picketed site of neutral E who repiared primary's trucks but was not ally nor were any primary Ees at neutral; picketing 20 minutes in 2 occasions held not de minimis where it ceased only after primary's truck was removed and when pickets were arrested)

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Pipefitters Local Union No. 120 (Huge Heating & Cooling Co., Inc. **JD-7-80**

(U agents who threatened neutral E with picketing unless non-U subcontractors were removed from job violated Act as U's object of enmeshing neutral E in contraversy not its own is proscribed)

2575-6779 Violence

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**

(U steward threatening driver employed by neutral E with large rock and to report driver to U which he informed him would result in being thrown out of U and fined)

2575-6784 Statements

Local 40, Ironworkers (Spancrete Northeast, Inc. **249 NLRB No. 112**

(fact that E's representatives were not present at meeting between competing U and representatives of contracting entity does not change violative nature of Respondent U's threat to strike E because such threat unlawfully coerces not only person threatened but also E from whom work assignment is sought)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

5000 CONDUCT EXEMPTED FROM PROHIBITION

5067 PUBLICITY OTHER THAN PICKETING - (8(b)(4) PROVISO)

5067-2000 **Forms of publicity**

5067-2050 Handbilling

Florida Gulf Coast Building Trades Council, AFL-CIO **252 NLRB No. 099**

(U handbilling all entrances to shopping mall in orderly manner calling for total consumer boycott of all stores there because major department store was being constructed at mall by general contractor paying substandard wages, held protected by *publicity* proviso, because general contractor qualifies as *producer* by applying capital, enterprise and service to shopping mall in building store and because of interdependent relationships that exists between department store, all other stores (neutral Es) and shopping mall owner as shown by rental and lease arrangements)

5067-4000 **Purpose of truthfully advising public**

5067-4025 Public

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(picketing held unlawful, notwithstanding contention of U and trades council that they engaged only in lawful informational picketing concerning non-U contractor's wages and working conditions, where U gegan picketing at time it knew nothing about contractor's wages and working conditions and Respondents never sought information regarding these matters; trades council's objectives went beyond seeking U wages and working conditions)

5067-4050 Consumers

Florida Gulf Coast Building Trades Council, AFL-CIO **252 NLRB No. 099**

(U handbilling all entrances to shopping mall in orderly manner calling for total consumer boycott of all stores there because major department store was being constructed at mall by general contractor paying substandard wages, held protected by *publicity* proviso, because general contractor qualifies as *producer* by applying capital, enterprise and service to shopping mall in building store and because of interdependent relationships that exists between department store, all other stores (neutral Es) and shopping mall owner as shown by rental and lease arrangements)

Florida Gulf Coast Building Trades Council, AFL-CIO **252 NLRB No. 099**

(omission of general contractor's name in handbill urging total consumer boycott of shopping mall where contractor constructing store, did not remove handbill from protection of *publicity* proviso as no intention to deceive found)

5067-6000 **Product or products produced**

5067-6025 Produced by primary

Florida Gulf Coast Building Trades Council, AFL-CIO **252 NLRB No. 099**

(U handbilling all entrances to shopping mall in orderly manner calling for total consumer boycott of all stores there because major department store was being constructed at mall by general contractor paying substandard wages, held protected by *publicity* proviso, because general contractor qualifies as *producer* by applying capital, enterprise and service to shopping mall in building store and because of interdependent relationships that exists between department store, all other stores (neutral Es) and shopping mall owner as shown by rental and lease arrangements)

Florida Gulf Coast Building Trades Council, AFL-CIO **252 NLRB No. 099**

(omission of general contractor's name in handbill urging total consumer boycott of shopping mall where contractor constructing store, did not remove handbill from protection of *publicity* proviso as no intention to deceive found)

7500 PROHIBITED OBJECTS OF PROHIBITED CONDUCT

7501 GENERALLY

7501-5000 **'An' object only required**

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

7520 CLAUSE 8(b)(4)(A) - FORCING OR REQUIRING

7520-2500 **Joining of labor organization**

7520-2533 By employer

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**

(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where E failed to give notice of withdrawal from E association before bargaining began and, while U took no action against E to enforce agreement, it was not under any obligation to take such action, consequently, there was no U consent to E's non-participation and U had right to rely on E's continued participation in E asciation)

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**

(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where formation of new organization by representatives from E associations participating in bargaining with U, including E association herein, did not extinguish latter association and make it different entity; new organization was committee of convenience by which participating E associations tried unsuccessfully to coordinate their bargaining efforts, and Es' forms authorizing new organization to bargain for them did not create new association)

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**

(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where there were no *unusual circumstances* that would have permitted E to withdraw from U association once negotiations began with U, since there was no impasse between association and U, and there was no dissolution of association)

7520-2567 By self-employed person

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(U threatening selfemployed dump truck owner-operator, an independent contractor, with loss of job at jobsite of construction contractor until he joined U, and insisting contractor c/d/b with independent contractors who were not and would not become members of U unlawful as it is secondary on its face)

7520-5000 Joining of employer organization

7520-5025 By employer

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

7520-5063 Employer action sought by union conduct

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(reasonable cause exists to believe U's activities violated 8(b)(4)(A) where U's contract, proffered to general contractor at construction site, violated 8(e) since *an object* of picketing inducements and coercion was to require contractor toenter into unlawful 8(e) agreement)

7520-5075 Indicia of objective

7520-5075-1200 Picket signs

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

7520-5075-6200 Statements to employers

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

7520-7500 Entering into agreement prohibited by section 8(e)

7520-7533 Agreements prohibited by section 8(e) (See 584-0000-0000-0000)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(violation where U coerced construction contractor with whom it had dispute to apply contract to hauling of gravel to jobsite by non-U materialman)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(striking with object of forcing E to accept licensing-leasing out clause which forbids E from licensing out its operations absent compliance with contract terms by lincensee E's Ees violative)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(reasonable cause exists to believe U's activities violated 8(b)(4)(A) where U's contract, proffered to general contractor at construction site, violated 8(e) since *an object* of picketing inducements and coercion was to require contractor toenter into unlawful 8(e) agreement)

7520-7583 Indicia of objective

7520-7583-6200 Statements to employers

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

7540 CLAUSE 8(b)(4)(B) - FORCING OR REQUIRING

7540-0100 Generally

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(Sec. 8(b)(4) as amended, *was enacted to prevent the widening of a labor dispute to entangle Es who had no concern with the original dispute*)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO **483 F.Supp. 1218 (D Ct WI, 1980)**
(if activity is *primary* in nature, even if it disrupts target E's business, it is protected under Act)

7540-2000 Any person to cease using products of any other producer

7540-2040 What constitutes cessation of use or dealing

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**
(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

7540-4000 Any person to cease doing business with any other person

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**
(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce,* where only political decision foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

7540-4020 Any other person entitled to protection

Sheetmetal Workers International Association, Local Union No. 91 (Hollister-Whitney Elevator Corp.) **JD-498-80**
(violation, where U picketed neutral non-U subcontractor with proscribed object of forcing general contractor to c/d/b with and reverse its decision to use another non-U subcontractor (primary) whom U had picketed in past over substandard wages on other parts of job where U had never picketed subcontractor on other jobs, and only did so when it found out primary subcontractor awarded job)

7540-4020-2500 Common ownership and control of primary and secondary firms

Southwestern Council of Industrial Workers, AFL-CIO (Duke City Lumber Company, Inc.) **253 NLRB No. 117**
(where U extended its picketing of E with which it had dispute to another E, extension of picketing to other E not unlawful, since the companies were not separate Es where second company effectively controlled first company)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

7540-4020-5000 Ally doctrine

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**

7540-4020-5000—Cont.

(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, since Missouri branch was ally of New Jersey branch; since E had corporate policy of having struck work of branches performed by other branches, there is no need to prove actual performance of struck work before concluding that nonstruck branches are *acting as part of* E and are not *wholly unconcerned* with one branch's labor dispute)

7540-4020-5001 Generally

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

7540-4020-5033 Work performed that of employees of primary (struckwork)

Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Water District **253 NLRB No. 033**

(U picketing of neutral E because barges of primary E located there, violative, where no Ees of primary are at, or expected to be at, neutral E, and work performed by neutral or primary's barges never performed by primary)

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**

(no ally relationship existed between primary E and neutral company that repaired its trucks as it had done in past; primary never performed nor had capability of performing maintenance on its vehicles and no contractual relationship between primary and neutral)

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**

(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, where E had corporate policy of cross-shipping, whereby other branches perform work of struck branch, and E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

7540-4020-5067 Performed pursuant to agreement with primary

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**

(no ally relationship existed between primary E and neutral company that repaired its trucks as it had done in past; primary never performed nor had capability of performing maintenance on its vehicles and no contractual relationship between primary and neutral)

7540-4040 What constitutes cessation of business

7540-4040-7500 Cessation of business between neutrals

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

7540-4070 Employer action sought by union conduct

Teamsters & Auto Truck Drivers, Local No. 85 (William Volker and Company) **253 NLRB No. 089**

(picketing calculated to involve neutral E in labor dispute and coerce it into severing relationship with primary E's violative)

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

Sheetmetal Workers International Association, Local Union No. 91 (Hollister-Whitney Elevator Corp.) **JD-498-80**

(violation, where U threatened to picket and picketed neutral contractor to force it to c/d/b with and reverse its decision to use low bidder and non-U primary E that U has picketed over past several years for failing to meet area standards)

General Teamsters Union Local No. 170, a/w IBT (Claflin - Donohue) **JD-373-80**

(violation where U's business agents threatened E in automotive repair business that U would picket E if E did not cease working on vehicles of E with which U had dispute)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(U's picketing, questioning workers on site, or calling and writing letters to neutral subcontractors and owner of site had objective of inducing or encouraging such individuals to c/d/b with primary general contractor, and U's direct and indirectpressure on secondary parties had as its goal pressuring of primary E to agree to U's contract demands; consequently, reasonable cause exists to believe 8(b)(4)(B) was violated)

7540-4080 Indicia of objective

7540-4080-1200 Picket signs

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

7540-4080-2500 Place of picketing

Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Water District **253 NLRB No. 033**

(U picketing of neutral E because barges of primary E located there, violative, where no Ees of primary are at, or expected to be at, neutral E, and work performed by neutral or primary's barges never performed by primary)

7540-4080-3700 Time of picketing

Sheetmetal Workers International Association, Local Union No. 91 (Hollister-Whitney Elevator Corp.) **JD-498-80**

(violation, where U picketed neutral non-U subcontractor with proscribed object of forcing general contractor to c/d/b with and reverse its decision to use another non-U subcontractor (primary) whom U had picketed in past over substandard wages on other parts of job where U had never picketed subcontractor on other jobs, and only did so when it found out primary subcontractor awarded job)

7540-4080-6200 Statements to employers

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(U's business manager in presence of field representative of trades' council informing general contractor's job superintendent that U was *going to try to shut job down* because of presence of non-U plumbing contractor, unlawful, since threat was to shut job down by whatever means necessary rather than to picket non-U contractor in compliance with *Moore Dry Dock* which would allow general contractor to protect job by establishing reserve gate)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**

(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

General Teamsters Union Local No. 170, a/w IBT (Claflin - Donohue) **JD-373-80**

(violation where U's business agents threatened E in automotive repair business that U would picket E if E did not cease working on vehicles of E with which U had dispute)

Pipefitters Local Union No. 120 (Huge Heating & Cooling Co., Inc. **JD-7-80**

(U agents who threatened neutral E with picketing unless non-U subcontractors were removed from job violated Act as U's object of enmeshing neutral E in contraversy not its own is proscribed)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

7540-4080-6200—Cont.

(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 170 (C.A. 8, 1980)**

(telephone conversation between neutral E and U agent during which U agent, in response to E's question what it would take to get pickets to leave, answered removal of primary E, not unlawful; conversation was initiated by E, and picketing ceased shortly thereafter, w/o any other evidence of a secondary objective, of work stoppages, or of interrupted deliveries; moreover, neither party interpreted conversation as attempt to involve neutral E in dispute)

7540-6000 Any other employer to recognize or bargain with union as representative

7540-6017 'Any other employer' entitled to protection

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**

(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

7540-6083 Indicia of objective

7540-6083-6200 Statements to employers

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

Plumbers and Steamfitters, Local 129, AFL-CIO v. N.L.R.B. **622 F.2d 575(T) (C.A. 2, 1980)**

(U's threat to picket jobsite immediately upon learning that neutral contractor had let plumbing job to subcontractor whose Ees were represented by another U certified by Bd)

7540-8000 Exemption of primary strike or picketing

7540-8001 Generally

7540-8001-1700 Identification of primary employer

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(picketing of construction jobsite which preceded establishment of reserved gates, not violative, notwithstanding name of primary E on signs was lightly handwritten and fact Ees of secondary E were transferred to other jobs for one day as result of picketing, since signs identified primary E and transfer of Ees was not result of coericon by Respondents)

7540-8001-3300 Primary activity defined

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

7540-8001-7500 Merger of primary's product with that of secondary

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**

(*Tree Fruits*, 377 U.S. 52 (1964) does not apply to cases in which retailer (neutral) sells only struck product (here, title insurance); when struck product had *so merged into (neutral) seller's total business as to be indistinguishable therefrom* boycott of struck product was illegal; interests of neutral secondary (E) must prevail)

7540-8020 Primary strikes or Inducements to Strike

7540-8020-5000 Primary objectives

7540-8020-5037 Area standards

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(picketing held unlawful, notwithstanding contention of U and trades council that they engaged only in lawful informational picketing concerning non-U contractor's wages and working conditions, where U began picketing at time it knew nothing about contractor's wages and working conditions and Respondents never sought information regarding these matters; trades council's objectives went beyond seeking U wages and working conditions)

7540-8020-5050 Unit work preservation

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(activities and agreements that seek not to preserve traditional work of displaced Ees but to acquire work of other Ees are unlawful under congressional proscription)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(to be classified as work preservation, boycott must be focused on *labor relations of contracting E vis-a-vis his own Ees*; boycott must not be *tactically calculated to satisfy U objectives elsewhere*; however, other Es and their Ees may be affected by the boycott but this is incidental effects of primary activity)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

7540-8040 Primary picketing

7540-8040-3300 Primary objectives

7540-8040-3375 Struck work or product

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**

(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, where E had corporate policy of cross-shipping, whereby other branches perform work of struck branch, and E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

7540-8060 Common situs picketing

7540-8060-0100 Generally

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(*since picketing must be restricted so as to effect only primary Ees, there is heavy burden on picketing U to convince trier of fact that picketing was conducted in manner least likely to encourage secondary effects*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(Moore Dry Dock criteria conjunctive, therefore all four must be met)

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

7540-8060-0100—Cont.

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(construction site not common situs and U's picketing subcontractor at the site not violative, in view of absence of Ees of any E other than primary subcontractor, and lack of reliable evidence that any neutral was present at time of picketing)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(general contractor's and project owner's going to primary subcontractor's construction site periodically each day merely to oversee work as it progressed in order to carry out functions as project coordinator and interested owner, held not being *present* at construction jobsite, notwithstanding that project owner had his storage van near project; his normal business was conducted at places other than construction sites)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

7540-8060-0120 Moore Dry Dock criteria of primary activity

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**
(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(U's picketing at common situs is presumptively lawful if U limits its picketing to times when primary E's Ees are actually present, pickets reasonably close to primary E's workers and clearly names person with whom it has primary dispute, and if primary E's workers are engaged in the company's normal business)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(U not under obligation to comply with *Moore Dry Dock* guidelines absent evidence that site of U's picketing was a common situs)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

District Council of Carpenters, Sacramento Area, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Nielsen Mickles Co.) **JD-(SF)-329-80**
(picketing gates reserved exclusively for neutral subcontractors, violative, where object for picketing was presumably to induce strike action by Ees of such subcontractors)

7540-8060-0130 Presumption of validity of picketing overcome

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(*it is well settled that Moore Dry Dock* does not establish substantive standards to be applied mechanically in determining lawfulness of specific common situs picketing; rather, *Moore Dry Dock* merely provides evidentiary tools to be employed in absence of more direct evidence of intent and purpose of labor organization; thus common situs picketing may be found to be violative even it conforms to *Moore Dry Dock* standards)

7540-8060-1700 **Picketing limited to times when situs of dispute located on common premises**

7540-8060-1717 Construction sites

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing at common situs unlawful since *Moore Dry Dock* standards breached where picketing took place when primary E was not on site, picketing was not reasonably close to situs of dispute where pickets crossed gate reserved for seconcaries and subsequent picketing was between gate reserved for primary E and gate reserved for secondary E and it was impossible to identify E which was involved in dispute by position of pikcets; fact picket signs adequately identified E which was target not sufficient for compliance with *Moore Dry Dock* standards)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(construction site not common situs and U's picketing subcontractor at the site not violative, in view of absence of Ees of any E other than primary subcontractor, and lack of reliable evidence that any neutral was present at time of picketing)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**
(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

7540-8060-1783 Business relationship between employers which picketing could disrupt

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(separate reserved gates on construction site for U general contractor and for non-U plumbing contractor in anticipation of picketing, proper, notwithstanding contention since non-U plumbing contractor with which U had dispute was prime contractor rather than subcontractor and no contractual relationship between general contractor and plumbing contractor and thus neutral E *not using, selling, transporting, dealing or doing business with* secondary E, since need for cooperation on project entails dealing among contractors and there is no authority or reason for limitation to contractor-subcontractor situations)

7540-8060-3300 **Primary employer engaged in normal business at common situs**

7540-8060-3333 Primary employees working with secondary employees as part of normal business

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**
(upon seeing truck of primary, ambulatory pickets unlawfully picketed site of neutral E who repaired primary's trucks but was not ally nor were any primary Ees at neutral; picketing 20 minutes in 2 occasions held not de minimis where it ceased only after primary's truck was removed and when pickets were arrested)

7540-8060-3375 Work of secondary related to normal business of primary employer

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**
(upon seeing truck of primary, ambulatory pickets unlawfully picketed site of neutral E who repaired primary's trucks but was not ally nor were any primary Ees at neutral; picketing 20 minutes in 2 occasions held not de minimis where it ceased only after primary's truck was removed and when pickets were arrested)

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**
(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

7540-8060-5000 **Picketing limited to places reasonably close to location of common situs**

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(territorial limits of permissible picketing, where there are reserved gates must be decided on *ad hoc basis under/underlying rule that involvement of secondary Es' must be kept to absolute minimum*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing at common situs unlawful since *Moore Dry Dock* standards breached where picketing took place when primary E was not on site, picketing was not reasonably close to situs of dispute where pickets crossed gate reserved for seconcaries and subsequent picketing was between gate reserved for primary E and gate reserved for secondary E and it was

7540-8060-5000—Cont.

impossible to identify E which was involved in dispute by position of pikcets; fact picket signs adequately identified E which was target not sufficient for compliance with *Moore Dry Dock* standards)

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO **483 F.Supp. 1218 (D Ct WI, 1980)**

(contention that U's conduct was unlawful secondary activity because picketing was notlimited to place *reasonably close* to gate which was reserved for primary E and its suppliers held of doubtful merit, in view of small size of site, small number of pickets, nearness of pickets to reserved gate, and improper initial marking of two gates by primary E as *union* and *non-union*)

7540-8060-5067 Availability of alternative places for picketing

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**

(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

7540-8060-6700 Picketing clearly discloses that dispute is with primary employer

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(picketing at common situs unlawful since *Moore Dry Dock* standards breached where picketing took place when primary E was not on site, picketing was not reasonably close to situs of dispute where pickets crossed gate reserved for seconcaries and subsequent picketing was between gate reserved for primary E and gate reserved for secondary E and it was impossible to identify E which was involved in dispute by position of pikcets; fact picket signs adequately identified E which was target not sufficient for compliance with *Moore Dry Dock* standards)

7540-8060-6717 Ambiguous, vague or misleading picket signs

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

7540-8060-6750 Picket signs stating that picketing for organizational purposes

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(picketing of construction jobsite which preceded establishment of reserved gates, not violative, notwithstanding name of primary E on signs was lightly handwritten and fact Ees of secondary E were transferred to other jobs for one day as result of picketing, since signs identified primary E and transfer of Ees was not result of coericon by Respondents)

7540-8060-6767 Picket signs naming employer, craft or product

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**

(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

7540-8070 Reserved gate picketing

7540-8070-0100 Generally

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(territorial limits of permissible picketing where there are reserved gates must be decided on *ad hoc basis under/underlying rule that involvement of secondary Es' must be kept to absolute minimum*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(separate reserved gates on construction site for U general contractor and for non-U plumbing contractor in anticipation of picketing, proper, notwithstanding contention since non-U plumbing contractor with which U had dispute was prime contractor rather than subcontractor and no contractual relationship between general contractor and plumbing contractor and thus neutral E *not using, selling, transporting, dealing or doing business with* secondary E, since need for cooperation on project entails dealing among contractors and there is no authority or reason for limitation to contractor-subcontractor situations)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**

(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

7540-8070-1700 Failure to use

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(*frequent breach of neutrality of gate reserved for Ees of secondary E will justify picketing U in not observing reservation of gates; however, common situs picketing may be found violative of Act even where reservation of primary E's gate is not precisely correct in all respects*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(use of gate reserved for neutral U general contractor rather than gate rather than gate reserved for primary E non-U plumbing contractor at construction site by architect and plumbing inspector did not deprive neutral E of statutory protection from secondary picketing since architect had overall responsibility and U may not assert right by impeding performance of duties by public officers)

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**

(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

Local 32B--32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(breaches in reserved gate system)

Plumbers, Local 48 (Calvert General Contractors, Inc.) **249 NLRB No. 173**

(U's picketing of neutral Es' gate, unlawful where, although reserve gate system was knowingly breached on one occasion due to difficulty in making a delivery, neutral general contractor immediately acknowledged such error and subsequent delivery of material was made through proper reserve gate; moreover, even assuming that certain incidents contaminated neutral gate and general contractor subsequently *rehabilitated* reserve gate system, incidents were isolated occurrences and did not establish pattern of destruction of reserve gate system justifying resumption of picketing at neutral gates)

District Council of Carpenters, Sacramento Area, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Nielsen Mickles Co.) **JD-(SF)-329-80**

(picketing gates reserved exclusively for neutral subcontractors, violative, where object for picketing was presumably to induce strike action by Ees of such subcontractors)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

7540-8070-3300 Adequacy of designation of reserved gate

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(contention that no proper reserve gate for Ees of primary E and persons dealing with that company was established so as to limit picketing to gate in order to comply with *Moore Dry Dock* criteria, where there was no paved or marked roadway for separate access by primary E, since no rationale that would require road construction, signs were large and no one was mislead by absence of paved road, nor was ingress difficult)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(sign at reserved gate which referred to primary E's *Ees and suppliers* but did not mention visitors did not give U carte blanche to engage in secondary picketing; further, Respondents could not be prejudiced where access through other gate by those dealing with primary E was forbidden)

Plumbers, Local 48 (Calvert General Contractors, Inc.) **249 NLRB No. 173**

7540-8070-3300—Cont.

(contention that reserved gate was not properly posted because it did not specifically mention that gate was to be used by primary E's suppliers, rejected, since omission of reference to such suppliers in posting of primary gate, w/o more, does not void reserved gate designation; moreover, result of posted signs was that primary E's suppliers clearly would be directed to reserved gate, there was no confusion which was attributable to signs, and primary Ees were diligent in obtaining compliance with reserved gate system)

Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 170 (C.A. 8, 1980)**
(picketing at construction site not unlawful, even though picketing continued at reserved gate, where gates had been improperly established, and there was evidence that gates had not been strictly observed even by president of company having dispute with U)

7560 CLAUSE 8(b)(4)(C) - FORCING OR REQUIRING

7560-4000 To recognize or bargain with labor organization as representative

Plumbers and Steamfitters, Local 129, AFL-CIO v. N.L.R.B. **622 F.2d 575(T) (C.A. 2, 1980)**

7560-6000 Where another union certified as representative

Plumbers and Steamfitters, Local 129, AFL-CIO v. N.L.R.B. **622 F.2d 575(T) (C.A. 2, 1980)**

7560-8000 Indicia of objective

7560-8037 Time of picketing

Local 282, Teamsters (Mid-County Transit Mix, Inc.) **250 NLRB No. 076**
(violation where U picketed successor for recognition at time it knew predecessor E with which it had contract was out of business and that its only member-Ee who had worked for predecessor was now employed by successor E, who had recognized another U)

7560-8075 Statements away from picket line

Plumbers and Steamfitters, Local 129, AFL-CIO v. N.L.R.B. **622 F.2d 575(T) (C.A. 2, 1980)**
(U business manager's approval of trade council president's attempt to bring company and U together in collective bargaining attempt indicated U's purpose of gaining recognition as representative of subcontractor primary's Ees who were represented by another U certified by Bd)

7580 CLAUSE 8(b)(4)D - FORCING OR REQUIRING

7580-4000 To assign particular work to particular employees rather than to other employees

7580-4001 Generally

7580-4001-3300 To employees in particular labor organization

Teamsters Local Union No. 170 (Massachusetts Laborers' District Council) **JD-39-80**
(violation where Bd awarded disputed work to Laborers in 10(k) proceeding and Teamsters continued to picket E for assigning such work to Laborers)

7580-4033 What constitutes jurisdictional dispute

7580-4033-3000 Employee demand for work notwithstanding union disclaimer

Laborers International Union of North America, AFL-CIO, Local Union No. 264 (Arrowhead Building Materials) **253 NLRB No. 037**

7580-4050 Employer action sought through union conduct

Plumbers, Local Union No. 412 (The Zia Company) **250 NLRB No. 137**
(violation of 8(b)(4)(i) and (ii)(D) where U induced and encouraged E's Ees to engage in work stoppages in course of their employment by refusing to perform services and cancelling contract with object of forcing or requiring E to reassign certain sewer installation work and also restrained and enforced E)

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(violation where Operating Engineers refused to abide by Bd's award in 10(k) proceeding of disputed forkllift work to Ees represented by Laborers rather than by Operating Engineers and picketed jobsite with jurisdictional objective of forcing E to assign forklift work to Ees represented by Operating Engineers; claim of area standards picketing rejected in view of failure to investigate E's wage rates, lack of picket signs' support of assertion, and prior claims to disputed work)

7580-4067 Indicia of objective

7580-4067-1200 Picket signs

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(claim of U that it was engaging in informational picketing only, rejected, where U claimed work, appeared at worksite with signs reading *E does not employ operators from Local U* and caused project to be shutdown)

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(picket signs stating that E did not pay U wages found not to support claim of lawful area standards picketing)

7580-4067-6200 Statements to employers

Local 40, Ironworkers (Spancrete Northeast, Inc. **249 NLRB No. 112**
(statement made by agent for Respondent U at meeting between parties involved in work jurisdiction dispute that Respondent U would engage in strike and picket E unless work involved was assigned to its members rather than Ees of E who were represented by another U violative)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(claim of U that it was engaging in informational picketing only, rejected, where U claimed work, appeared at worksite with signs reading *E does not employ operators from Local U* and caused project to be shutdown)

7580-6000 Unless employer failing to conform to Board order or certification determining representative of employees performing work

7580-6050 Failure to comply with Board determination of dispute

Teamsters Local Union No. 170 (Massachusetts Laborers' District Council) **JD-39-80**
(violation where Bd awarded disputed work to Laborers in 10(k) proceeding and Teamsters continued to picket E for assigning such work to Laborers)

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(violation where Operating Engineers refused to abide by Bd's award in 10(k) proceeding of disputed forkllift work to Ees represented by Laborers rather than by Operating Engineers and picketed jobsite with jurisdictional objective of forcing E to assign forklift work to Ees represented by Operating Engineers; claim of area standards picketing rejected in view of failure to investigate E's wage rates, lack of picket signs' support of assertion, and prior claims to disputed work)

7580-8000 Section 10(k) proceedings for determination of jurisdictional dispute

7580-8001 Generally

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(conflict in testimony does not prevent Bd from proceeding under *10(k)* for, in this type of proceeding, Bd is charged w/determining that *reasonable cause* existsfor finding violation rather than occurrence of violation)

7580-8020 Procedure under Section 10(k)

7580-8020-2200 Opportunity for voluntary adjustment

7580-8020-2225 Existence of agreed upon method for voluntary adjustment

Local 542, Operating Engineers (Georgia Pacific Corporation) **253 NLRB No. 061**
(none, where there was no evidence to show that E was bound by inter-U agreement assigning work similar to disputed work to Ees represented by Operating Engineers)

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(*none* where no evidence that E participated in, or was bound by, adjudication of dispute by (T3ImpartialJurisdictional Disputes Board)

New York Typographical Union No. 6, AFL-CIO (New York Times Newspaper Division of The New York Times Company) **252 NLRB No. 039**
(none where contract of one U claiming disputed work contained no arbitration requirement and contract of other U claiming disputed work was not in evidence and no evidence that E had agreed to submit work assignment disputes to *AFL-CIO Internal Disputes Plan*)

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(no agreed-upon method for voluntary adjustment, where subcontractor, not contractually related to general contractor and necessary party herein, was not bound by IJDB award by virtue of general contractor's membership in Associated General Contractors)

7580-8020-4400 Quashing of notice of hearing

7580-8020-4450 No reasonable cause to believe Act violated

Plumbers, Local 262 (Dyad Construction, Inc.) **252 NLRB No. 010**

7580-8020-4450—Cont.

(jurisdictional dispute no longer existed where one of competing Us or parties had effectively renounced its claim to disputed work of laying sewer line pipes for municipality)

United Steelworkers of America, Local 12970 (Rainbow Security Systems, Inc.) **250 NLRB No. 106**
(where allegedly disputed work assignment was only one of 31 reasons for threat of generalized strike, E proposed to assign that work to Ees represented by U rather than to unrepresented Ees as concession to get something it considered more important from U, and assignment was agreed upon before strike and not a reason for it)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(dispute properly before Bd, notwithstanding contention of one of competing Us that it was merely engaging in informational picketing and that work was not claimed by proper Local of competing U, where U appeared at worksite, claimed work, and caused shutdown of project)

7580-8020-4458 Completion of project

Operating Engineers, Local 25, Marine Division, AFL--CIO (Great Lakes Dredge & Dock Company **251 NLRB No. 158**
(notwithstanding conclusion that reasonable cause existed to believe *Sec. 8(b)(4)(D)* violation had occurred, notice of *10(k) hearing* was *quashed* where Bd was unable to award work of manning tugboat in dredging operation, because on record, Bd could not evaluate meaningfully traditional factors used in determining which competing Ee group should be awarded disputed work and job completed)

7580-8020-4467 No jurisdictional dispute

United Steelworkers of America, Local 12970 (Rainbow Security Systems, Inc.) **250 NLRB No. 106**
(where allegedly disputed work assignment was only one of 31 reasons for threat of generalized strike, E proposed to assign that work to Ees represented by U rather than to unrepresented Ees as concession to get something it considered more important from U, and assignment was agreed upon before strike and not a reason for it)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(dispute properly before Bd, notwithstanding contention of one of competing Us that it was merely engaging in informational picketing and that work was not claimed by proper Local of competing U, where U appeared at worksite, claimed work, and caused shutdown of project)

Teamsters, Union Local 839 (Operating Engineers, Local 370) **249 NLRB No. 010**
(notice of hearing quashed where only dispute was between U and E, not between rival groups of Ees competing for same work)

7580-8020-4476 Disclaimer

Local Union No. 542, Operating Engineers (Local 15253, Steelworkers) **247 NLRB No. 159**
(notice of hearing not quashed since jurisdictional dispute existed, notwithstanding one U's disclaimer of interest in work through its attorney by letter and on record at hearing, where U had engaged in noninformational picketing at disputed worksite and threatened Ees and officers of conpeting U to prevent them from crossing picket line)

7580-8020-8800 **Board determination**

7580-8020-8850 Finding of reasonable cause to believe Act violated

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(conflict in testimony does not prevent Bd from proceeding under *10(k)* for, in this type of proceeding, Bd is charged w/determining that *reasonable cause* existsfor finding violation rather than occurrence of violation)

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(U stated to general contractor that U would shut down construction project if subcontractor did not abide by anticipated IJDB award in favor of U; U stated to subcontractor that friendly relations would be impossible if disputed work was not reassigned; and U's picketing caused other Ees not to report to work)

7580-8040 Factors evaluated in making determination

7580-8040-0500 **Board certification**

Laborers International Union of North America, AFL-CIO, Local Union No. 264 (Arrowhead Building Materials) **253 NLRB No. 037**

7580-8040-1600 **Union agreement allocating work**

7580-8040-1683 Award of parent federation

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(award of jurisdiction by Joint Council not binding upon Bd)

7580-8040-3300 **Board rulings in related representation proceedings**

7580-8040-3350 In related 10(k) proceedings

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(violation where Operating Engineers refused to abide by Bd's award in 10(k) proceeding of disputed forkllift work to Ees represented by Laborers rather than by Operating Engineers and picketed jobsite with jurisdictional objective of forcing E to assign forklift work to Ees represented by Operating Engineers; claim of area standards picketing rejected in view of failure to investigate E's wage rates, lack of picket signs' support of assertion, and prior claims to disputed work)

7580-8040-3800 **Joint Board decisions**

7580-8040-3867 In related cases

International Association of Heat and Frost Insulators and Asbestos Workers, Local Union No. 41 (Close Insulation Company, Inc.) **251 NLRB No. 192**
(which were merely records of first-step grievance settlements involving U and another E, and not formal determinations or awards; therefore, not entitled to significant weight in deciding instant dispute)

7580-8040-4400 **Reconstituted Joint Board decisions**

Local Union No. 1333, Painters & Allied Trades **247 NLRB No. 197**
(E not obligated to comply with Joint Board decision since it did not agree to be bound by decision, nor did E join in submission of matter to Joint Board since it was neither present nor represented in proceedings, and its submission of information to Joint Board was insufficient to amount to participation; further, award did not set forth factors weighed in making decision)

7580-8040-4433 In subject case

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(although IJDB award was not finding on E, Bd considered it as factor in determining proper assignment of work in dispute; however, Bd gave award no controlling weight where Bd was unable to evaluate award because record did not indicate what evidence formed basis for award, and award did not explain even in cursory fashion what particular facts were relied upon)

7580-8040-4900 **Other awards or rulings**

7580-8040-4950 Arbitrator's award

Electrical Workers, Local 104 (Teamsters Local Union No. 170) **248 NLRB No. 134**
(controlling weight not given to award where one U in dispute neither participated nor agreed to be bound and arbitrator refused to consider any factors Bd might consider)

7580-8060 Board determination of jurisdictional disputes (by SIC category)

7580-8060-1500 **Building construction - General contractors**

Plumbers, Local Union 345 (A-Associate Industries Corporation of Montebello) **253 NLRB No. 081**
(handling, laying and installation of lawn sprinkler and irrigation pipes as well as installation of valves and valve boxes connected therewith at commercial and residential job sites located in nine southern California countries in which Plumbers and Laborers have concurrent jurisdiction awarded Ees represented by Laborers rather than Plumbers)

Plasterers' and Cement Masons' Local 449, International Association of Operative Plasterers and Cement Masons, AFL-CIO (Cusick's, Inc.) **252 NLRB No. 113**
(work of installing or reinstalling all forms, screeds, screed forms, bulkheads, or pins used in connection with horizontal pouring of concrete awarded to Ees represented by Carpenters rather than Plasters' and Cement Masons based on E's assignment of work, past practice, and effeciency and economy of operation)

Operating Engineers, Local No. 234 (Garmer Construction Co.) **251 NLRB No. 031**
(work operating forklift tractors used to transport building framing materials from stockpiles or delivery vehicles to structures being erected and movement of wooden structures onto buildings that are being erected or movement of such building materials to other points at projects awarded to Ees working at projects for housing of elderly people represented by Carpenters rather than to Operating Engineers)

Plumbers, Local Union 345 (A-Associate Industries Corporation of Montebello) **253 NLRB No. 081**
(handling, laying and installation of lawn sprinkler and irrigation pipes as well as installation of valves and valve boxes connected therewith at commercial and residential job sites located in nine southern California countries in which Plumbers and Laborers have concurrent jurisdiction awarded Ees represented by Laborers rather than Plumbers)

7580-8060-1500—Cont.

Laborers International Union of North America, AFL-CIO, Local Union No. 264 (Arrowhead Building Materials) **253 NLRB No. 037**
(transporting drywall material, either by hand or dolly, from point dropped from E's truck to location designated for delivery by contractor who purchased material awarded to E's Ees represented by Teamsters rather than to Laborers in view of E preference, efficiency, economy, job impact and board certification)

International Union of Operating Engineers, Local Nos. 77, 77-A, 77-RA, 77-B, 77-C, 77-D, AFL-CIO **252 NLRB No. 016**
(operation of forklift which transports and hoists masonry materials in servicing masons employed by E at Dirkson Senate Office Building construction site awarded to Ees represented by Laborers rather than operating Engineers)

International Brotherhood of Painters and Allied Trades of The United States and Canada, District Council No. 51, AFL-CIO (Plasters' Local Union No. 96) **250 NLRB No. 171**
(finishing of gypsum wallboard at construction sites of two stores on shopping mall awarded Ees represented by Plasterers rather than Painters)

7580-8060-1600 Construction other than building construction - General contractors

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(work of *spray curing* concrete for contractor installing concrete deck on bridge surface awarded to Ees represented by Laborers rather than Bricklayers)

United Mine Workers of America; District No. 17, et al. (Elk Run Coal Company, Inc.) **251 NLRB No. 169**
(construction of coal mining complex awarded to Ees represented by Steelworkers rather than by United Mine Workers)

Local 157, Plumbers (Local 204, Laborers) **248 NLRB No. 032**
(installation of water lines, awarded to Ees represented by Laborers rather than Plumbers and Steamfitters)

Local Union No. 542, Operating Engineers (Local 15253, Steelworkers) **247 NLRB No. 159**
(clearing sites, grading for roadways, placing storm drainage, building excavation for place of driving of pilings and placing stone for site stabilization in area excavated at land fill assigned to Ees of E represented by Steelworkers rather than to Operating Engineers in view of bargaining agreement between Steelworkers and E and past practice)

7580-8060-1700 Construction - Special trade contractors

International Association of Heat and Frost Insulators and Asbestos Workers, Local Union No. 41 (Close Insulation Company, Inc.) **251 NLRB No. 192**
(work of making metal jacketing for insulating contractor and constructing jacketing for contractor's customers awarded to E's unrepresented Ees rather than to Ees represented by Asbestos Workers)

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(welding of pipes and joints at water reservoir project awarded to Ees represented by Operating Engineers rather than by Boilermakers)

Electrical Workers, Local 104 (Teamsters Local Union No. 170) **248 NLRB No. 134**
(operation of pickup and service trucks used to transport to and from jobsite and from locations w/i site electrical construction crew employed by contractor engaged in installation of traffic signals assigned to Ees of E represented by Electrical Workers rather than to Teamsters; notwithstanding arbitration award in which contractor was found to have breached contract by subcontracting work to E not using Teamster drivers where Electrical Workers did not participate or agree to be bound and arbitrator refused to consider any factors Bd might consider)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(operation of cranes mounted on E's semitractor rigs to erect prefabricated floors, walls, and trusses at construction of building assigned to Ees of E engaged in manufacture, sale, and erection of fabricated building components represented by Teamsters rather than to Operating Engineers in view of E preference, area practice, relative skills and economy of operation)

Drywall Tapers and Finishers, Local 2006, a/w Painters (Painters, Local Union 6) **248 NLRB No. 093**
(assignment of drywall taping performed by members of E association engaged in contruction business, awarded to Ees represented by Drywall Tapers and Finishers Local 2006, rather than International Brotherhood of Painters and Allied Trades of U.S. and Canada, Local 6)

Sheetmetal Workers' International Association, Local Union No. 9, AFL-CIO (Elward, Inc.) **250 NLRB No. 099**
(work of installing metal panels, including walls, floors and roofs assigned in ratio of 9-1 to Ees represented by Ironworkers and Sheetmetal Workers in composite crew based on E's past practice)

Local 1005, Northwest Indiana & Vicinity District Council of Carpenters (J. F. Edwards Construction Company) **253 NLRB No. 103**
(work of erection and setting concrete forms, and construction and placement of wooden box-like forms for shoring up walls of foundation holes, for contractor engaged in construction of highway traffic signs and lighting singals project along Interstate Tollroad awarded to Ees represented by Laborers rather than Carpenters)

Operating Engineers, AFL-CIO, Local 542 (Power Systems, Inc.) **253 NLRB No. 038**
(operation of 2-ton portable electrical hoist and operation of three-quarter inch hand valve for transmission of plant air as tools of the trade in performance of boiler repair and maintenance work at power station awarded to Ees represented by Boilermakers rather than Operating Engineers)

Local Union No. 1333, Painters & Allied Trades **247 NLRB No. 197**
(handling and installation of alumium frame windows secured to wood blocking contracted to glass installation subcontractor assigned to Glaziers rather than to Carpenters in view of E preference, fact E had stable work force of glaziers but had to hire carpenters, and that carpenters had to be instructed in some aspects of work while glaziers possessed requisite skills)

Ironworkers Local 25 (Glaziers and Glass Workers Local Union No. 357) **247 NLRB No. 200**
(work of unloading, storing, and installing storefront framing material on three construction projects for wholesaler, installer and contractor of glass installation work awarded Ees represented by Glaziers rather than by Ironworkers)

Local Union No. 683, Electrical Workers (Ducore, Inc.) **247 NLRB No. 154**
(installation of guide wires which are imbedded in concreate flour for use by forklift guidance system, awarded to Ees represented by Laborers rather than Electrical Workers)

7580-8060-2000 Food and kindred products

Carpenters District Council of Milwaukee County (District No. 10, Machinists and Aerospace Workers) **247 NLRB No. 189**
(work of installing and maintaining entire case stop assembly on pneumatic Automatic Depalletizers used at E's brewery awarded to millwrights represented by carpenters rather than machinists)

7580-8060-2600 Paper and allied products

Woodworkers, Local 3--364; I.W.A. Joint Administration No. 1, Woodworkers (Local 712, United Paperworkers) **247 NLRB No. 193**
(operation, control, and maintenance of newly installed power boiler at manufacturer of paper and wood products assigned to Ees of E represented by Woodworkers rather than to Paperworkers in view of past practice, fact that new boilers will replace boilers manned by Woodworkers, and that supervisors would not have to supervise Ees from two separate units)

7580-8060-2700 Printing, publishing, and allied industries

New York Typographical Union No. 6, AFL-CIO (New York Times Newspaper Division of The New York Times Company) **252 NLRB No. 039**
(work of service, maintenance and repair of automated composing room equipment at plant of publisher and distributor of daily newspaper awarded to E's Ees represented by *Typographers* rather than Electricians)

New York Typographical Union No. 6, International Typographical Union, AFL-CIO (New York News, Inc.) **252 NLRB No. 090**
(maintenance and servicing of electronic publishing system awarded to Ees represented Typographical U rather than those represented by Electrical Workers based on their superior skills and training, economy and efficiency of operation, job import, E preference and assignment)

Columbia Typographical Union No. 101, Affiliated with International Typographical Union, AFL-CIO (The Washington Post Company) **251 NLRB No. 026**
(work of operating scanner portion of EOCOM facsimile machine awarded to Ees represented by Typographical U rather than those represented by Graphic Arts U based on economy and efficiency of operation, past practice and E preference)

Newspaper Guild of New York, Local 3, The Newspaper Guild, AFL-CIO-CLC (New York Times Newspaper Division of The New York Times Company) **249 NLRB No. 135**
(recording of news stories called in by reporters and transcribing these recordings into video display terminal or typewriter at newspaper recording room assigned to Ees represented by Newspaper Guild rather than Typographers on basis of E's past practice, efficiency and economy of E's operations, skills and work involved and job impact)

7580-8060-2700—Cont.

Newspaper & Mail Deliverers' Union of New York & Vicinity (New York Mailers' Union No. 6) **247 NLRB No. 080**
(work of operating auxiliary control panel located at bundle entry device during distribution of newspaper for city circulation at facility of E engaged in business of publishing morning daily and Sunday newspaper, awarded to Ees represented by Drivers rather than Mailers)

Buffalo Printing Pressmen, Assistants and Offset Workers, Local Union No. 27 (Graphic Arts International Union, Local 17--B) **247 NLRB NO. 194**
(operation of delivery room conveyor lines equipment in production of newspaper at E engaged in printing books and magazines, awarded to Ees represented by Pressmen rather Bookbinders)

7580-8060-2800 Chemical and allied products

Warehouse Union Local 6 (Paint Makers and Allied Trades Union Local 1975, AFL-CIO) **247 NLRB No. 035**
(transferring paint and paint-related materials directly from holding tanks to tank trucks for paint manufacturer assigned to Ees represented by Paint Makers rather than by Longshoremen's and Warehousemen's Union)

7580-8060-3400 Fabricated metal products, except ordnance, machinery, and transportation equipment

Local 542, Operating Engineers (Georgia Pacific Corporation) **253 NLRB No. 061**
(work of hoisting drywall and metal support brackets for delivery above ground floor level at customer's construction site for E engaged in manufacture and supply of building construction materials awarded to Ees represented by Teamsters rather than Operating Engineers)

7580-8060-3700 Transportation equipment

Millwrights and Machine Erectors Local No. 1906, Carpenters (Sheet Metal Workers', Local Union 19) **249 NLRB No. 025**
(erection of Eaton-Kenway automated mini-load storage system at automobile manufacturer's parts warehouse awarded to Ees represented by Sheet Metal Workers rather than Millwrights)

7580-8060-4200 Motor freight transportation and warehousing

Dallas General Drivers, Local 745 (Local 714, Operating Engineers) **247 NLRB No. 116**
(all fork-lift or fork truck work involving relocation, installation or removal of machinery or equipment in existing construction performed by Ees of specialized common carrier engaged in heavy equipment drayage and rigging and trade show convention handling assigned either to Ees represented by Teamsters and/or to Ees represented by Operating Engineers but to neither exclusively in view of E's past practice and E's desire to continue it)

International Longshoremen's Association and its Locals No. 1413--1465, AFL-CIO (Bridge Terminal, Inc.) **252 NLRB No. 097**
(unloading of cargo vessels at docks located near E's cold storage warehouse not awarded to Longshoremen but rather to unrepresented Ees of E hired pursuant to oral agreement with Teamsters which anticipated they be added to Teamsters unit to perform unloading and obviate need for Longshoremen, in view of economy and efficiency and E preference since Longshoremen's agreement would require more Ees to perform work and shorter shifts)

7580-8060-4400 Water transportation

International Longshoremen's Association #1922; and International Longshoremen's Association #1526 (Sea-Land Service, Inc. (Atlantic Division)) **249 NLRB No. 069**
(disputed work of performing maintenance work on shoreside container crane for E engaged in containerized ocean transportation business at its loading facility awarded Ees represented by Marine Engineers and Seafarers rather than by Longshoremen)

7580-8060-4800 Communication

Theatrical Protective Union No. One, I.A.T.S.E., AFL-CIO (American Broadcasting Company, A Division of American Broadcasting Companies, Inc.) **249 NLRB No. 148**
(carrying and handling of handheld, mobile electronic television monitor used for cuing actors awarded to Ees represented by Theatrical Protective U, I.A.T.S.E., rather than Ees represented by National Association of Broadcast Ees and Technicians because of E's past practice, relative skills, job function and job impact)

7580-8060-5000 Wholesale trade - durable goods

International Longshoremen, Local No. 54 (General Teamsters Local No. 439) **248 NLRB No. 103**
(transportation of scrap metal from yard of E engaged in non-retail sale of scrap metal to dockside assigned to Ees of E represented by Teamsters, rather than to Longshoremen in view of collective bargaining agreement)

7580-8060-5300 Retail trade-general merchandise

Retail and Wholesale Warehousemen's Union, Local No. 130 (Nordstrom, Inc.) **250 NLRB No. 115**
(work of loading and unloading trucks at E's distribution center for retailing clothing and shoes awarded to Ees represented by Retail and Wholesale Warehousemen rather than Teamsters, in view of E preference, economy and efficiency of operation, and company practice)

IBT, General Warehousemen and Employees Union, Local 636 (Gimbel Brothers, Inc. **251 NLRB No. 177**
(operation of freight elevators when used to haul store merchandise at E's store assigned to Ees represented by Teamsters rather than Service Employees)

7580-8080 Scope of award

7580-8080-0100 Generally

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(remedy affecting U's activities with other Es in city not overly broad, since it proscribes only conduct with unlawful jurisdictional objective)

7580-8080-1000 Limited to instant dispute

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(where issuance of *broad work award* soughtby Laborers' U was not warranted)

7580-8080-2000 Similar dispute within entire geographic area of employer's normal operations

Sheetmetal Workers' International Association, Local Union No. 9, AFL-CIO (Elward, Inc.) **250 NLRB No. 099**
(scope of award encompasses whole state where E operates because nature of E's business, i.e., performing various jobs at one time with stable work force which is constantly interchanging, indicates that dispute is not restricted to one jobsite and dispute likely to arise again)

566 EXCESSIVE OR DISCRIMINATORY MEMBERSHIP FEES - (SEC. 8(b)(5))

2000 NATURE AND SCOPE OF PROSCRIPTION

2001 GENERALLY

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**
(statute does not define the term *excessive* The legislative history of the Act shows that the purpose of Section 8(b)(5) was to prevent the circumvention of Sections 8(a)(3) and 8(b)(2), which interdict closed shops, by the device of requiring new members to pay exhorbitant initiation fees)

2033 DESIGNED TO PREVENT IMPOSITION OF HIGH FEE TO PROTECT JOB SECURITY

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

2067 TERMS ARE TO BE READ IN THE DISJUNCTIVE

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

4000 EXCESSIVE OR DISCRIMINATORY FEE

Brewery and Soft Drink Workers, Liquor Drivers and New and Used Car Workers, Local 1040 Teamsters (Pepsi-Cola Bottling Company; et al.) **249 NLRB No. 039**
(where U's decision to raise fees was part of overall reevaluation of initiation fees at all named Es as required by parent body, fact that fees at charging party E were raised 500 percent which was much more than at others not violative where no unlawful intention to create closed shop or monopolize employment for U members existed)

4017 UNLAWFUL IF EITHER EXCESSIVE OR DISCRIMINATORY INITIATION FEES

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**
(contention that increased initiation fee restrained applicants from accepting jobs with E rejected; evidence of increase in ratio of number of interviews of applicants to number of jobs filled by E valueless where E failed to give basis for his figures or describe records he consulted to refresh his recollection)

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**
(initiation fee held not excessive where it was 112 percent of Ees' average weekly wage, and it was not shown to be excessive in comparison with initiation fees in that *particular industry*)

6000 RELEVANT FACTORS

6000-0100 Generally

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**
(evidence of U's motive, object, or purpose in imposing initiation fee irrelevant to whether it was excessive)

6033 INITIATION FEE OF OTHER UNIONS IN PARTICULAR INDUSTRY

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**
(GC's evidence of initiation fee charged by U representing Ees of polyvinyl chloride resins manufacturers too limited and the manufacturers do not constitute *a particular industry* w/i meaning of 98(b)(5); but, assuming they did constitute such industry, difference between initiation fee herein and highest fee elsewhere in such industry not excessive)

6067 WAGES CURRENTLY PAID TO EMPLOYEES AFFECTED

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**
(initiation fees of 112 percent of Ees' average weekly wage herein found not excessive)

8000 AFFIRMATIVE DEFENSES

572 PAYMENT FOR SERVICES NOT PERFORMED - (SEC. 8(b)(6))

0100 GENERALLY

5000 SCOPE OF PROSCRIPTION

578 PICKETING FOR RECOGNITION AND BARGAINING

0100 GENERALLY

2000 CONDUCT PROHIBITED WHEN FOR PROHIBITED OBJECT

2025 PICKETING

2025-0100 Generally

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) **252 NLRB No. 124**

(U's picketing of E (who purchased bankrupt store and failed to hire Ees of bankrupt E) to induce it to give preferential hiring consideration to former Ees has permissible object)

4000 PROHIBITED OBJECTS - FORCING OR REQUIRING

4025 AN EMPLOYER TO RECOGNIZE OR BARGAIN WITH A LABOR ORGANIZATION AS REPRESENTATIVE OF HIS EMPLOYEES

4025-5000 What constitutes recognition and bargaining

4025-5050 To obtain initial acceptance as representative

Sheet Metal Workers Union Local No. 3 (McCarthy Heating & Air Conditioning Services, Inc.) **253 NLRB No. 053**

(U's picketing had unlawful objective of forcing E to recognize U as Ees' representative rather than, as contended, protecting area standards, where U showed Ees disparity between their conditions and those of Ees it represented, made notes on Ees' attitude toward U and prior U membership, inquired about minorities and females, and told Ees it was picketing to benefit them, that they could have a U shop and get more benefits as such through U's leadership)

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **252 NLRB No. 156**

(U's picketing E for over 30 days w/o filing ptn for purpose of securing recognition, unlawful; U not permitted to present evidence regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which U had no bargaining relationship, and another E with which had longstanding relationship, thus rendering picketing for continued ratherthan initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case and no ULP charge that would impede processing of R ptn)

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**

(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**

(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

4025-5083 Not applicable to union entitled to recognition

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **252 NLRB No. 156**

(U's picketing E for over 30 days w/o filing ptn for purpose of securing recognition, unlawful; U not permitted to present evidence regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which U had no bargaining relationship, and another E with which had longstanding relationship, thus rendering picketing for continued ratherthan initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case and no ULP charge that would impede processing of R ptn)

6000 INDICIA OF OBJECTIVE

6007 PICKET SIGNS

6007-3300 Signs advising public employer does not have contract

Retail Store Employees Union Local 214, Affiliated With United Food & Commercial Workers International Union, AFL-CIO & CLC (Pick-N-Save Warehouse Foods, Inc.) **252 NLRB No. 086**

(while picketing was ostensibly informational, signs utilized by U protesting E did not have contract with U and did not employ members of U left no doubt of recognitional object)

Ogden Enterprises, Ltd. (Local 471, Restaurant Employees) **248 NLRB No. 046**

(notwithstanding U's picket signs and leaflets stating that E did not have contract with U and U's alleged purpose of persuading public to patronize restaurants with U contracts, Bd held U's picketing tantamount to demand for recognition where U neither pikceted all nonU restaurants nor did it attempt to inform public which restaurants had agreements with U; additionally U made no attempt to inform either public or E that it was not seeking recognition, and it was U's chief organizer, not business manager, who initially contacted and later met with E for purpose of discussing the picketing)

Local 1506, Carpenters (Best Drywall Co.) **JD-(SF)-266-79**

(picket signs held not to come w/i second proviso because of failure to state that E did not employ members of, or have a contract with, U)

6007-6700 Area standards signs

Miscellaneous Drivers and Helpers Union Local 610 (Tower Hotel, Inc.) **JD-238-80**

(U's picketing of E with signs stating wages and working conditions of E were not equal to those of U members and also containing recognitional disclaimer not violative where U had contract with another E which did establish area standards, U was aware of wages, though not fringe benefits, paid to Ees of picketed E, U made no cliam to represent Ees of E)

Congress of Independent Unions and Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 172 (C.A. 8, 1980)**

(U's picketing violative since E had lawfully recognized another U; respondent U's picketing had recognitional object where letters to E and pickets stated that Ees were working under conditions substandard to those enjoyed by its members and picketing commenced w/i 2 weeks of Bd overruling its objections to election)

6014 PLACE OF PICKETING

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO (Earl J. Engle, Attorney on Behalf of R & F Grocers, Inc.) **252 NLRB No. 156**

(where E and U had collective-bargaining relationship at one location and E's sons opened same type of store at second location U's recognitional picketing at second store w/o filing representative petition violative)

6031 STATEMENTS OF UNION LEADERS

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) **252 NLRB No. 124**

(picketing which U claimed informational held to be for recognition and thus unlawful where at rally immediately preceding start of picketing U officials stated: *this place will be U* and also *who needs the U-E*)

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such

6031—Cont.

admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 059**
(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

Carpenters Local 316, United Brotherhood of Carpenters and Joiners of America, AFL-CIO **JD-(SF)-316-80**
(U's picketing of joint venture with informational area standards signs for more than 30 days violative where U's agents revealed to E at beginning of picketing that goal was representation and never made any attempt to learn economic status of joint venture, and demanded that joint venture sign agreement)

6035 STATEMENTS TO EMPLOYERS

Local 1506, Carpenters (Best Drywall Co.) **JD-(SF)-266-79)**
(U representative's asking what were chances of getting a contract, requesting E to join U and stating that for E to join U would be a lot easier on him)

6040 INQUIRIES OF EMPLOYEES

Sheet Metal Workers Union Local No. 3 (McCarthy Heating & Air Conditioning Services, Inc.) **253 NLRB No. 053**
(U's inquiries about Ees' attitude toward Us, prior U membership, and minorities and females indicated organizational intent)

6042 STATEMENTS TO EMPLOYEES

Sheet Metal Workers Union Local No. 3 (McCarthy Heating & Air Conditioning Services, Inc.) **253 NLRB No. 053**
(U's showing Ees through its survey form the disparity between their conditions and those of Ees it represented and telling them it was picketing to benefit them, that they were not too small for a U shop and as such could get more benefits, and that U was a leader in getting benefits indicated organizational intent)

6046 CONDITION FOR DISCONTINUANCE OF PICKETING

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

6063 AREA STANDARDS OBJECTIVES

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**
(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(*area standards* picketing permissible if there is no recognitional or organizational purpose)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

Miscellaneous Drivers and Helpers Union Local 610 (Tower Hotel, Inc.) **JD-238-80**
(U's picketing of E with signs stating wages and working conditions of E were not equal to those of U members and also containing recognitional disclaimer not violative where U had contract with another E which did establish area standards, U was aware of wages, though not fringe benefits, paid to Ees of picketed E, U made no cliam to represent Ees of E)

International Brotherhood of Electrical Workers, Local 453 (Southern Sun Electric Corporation) **252 NLRB No. 103**
(U which picketed E who had lawful contract with another U violated Act where U's demands were much broader than necessary to achieve compliance with area standards)

6091 DISCLAIMER OF INTEREST IN RECOGNITION

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**
(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

8000 CIRCUMSTANCE WHERE RECOGNITIONAL PICKETING PROHIBITED

8025 WHERE EMPLOYER HAS RECOGNIZED ANOTHER LABOR ORGANIZATION - CLAUSE 8(b)(7)(A)

8025-3300 Recognition lawful

8025-3320 Majority representative

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(in 8(b)(7)(A) proceeding, U's evidence tending to show that incumbent U's majority may have been tainted and not uncoerced held insufficient to rebut conclusion that incumbent had been lawfully recognized; U's evidence of sporadic substitution for supervisors by Ees participating in U activities, supervisor's election to U office, apparent acceleration of dues checkoff, and brief nature of, and rapidly concluded, negotiations had little probative value in support of U's contentions)

Congress of Independent Unions and Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 172 (C.A. 8, 1980)**
(U's picketing violative since E had lawfully recognized another U; respondent U's picketing had recognitional object where letters to E and pickets stated that Ees were working under conditions substandard to those enjoyed by its members and picketing commenced w/i 2 weeks of Bd overruling its objections to election)

8025-6700 Question concerning recognition may not be raised (see 347- for bars to conduct of election)

8025-6780 Employees for whom recognition sought covered by contract

International Brotherhood of Electrical Workers, Local 453 (Southern Sun Electric Corporation) **252 NLRB No. 103**
(U which picketed E who had lawful contract with another U violated Act where U's demands were much broader than necessary to achieve compliance with area standards)

Seafarers International Union of North America, Pacific District, AFL-CIO, and Its Affiliates (American Pacific Container Lines, Inc. (AMPAC)) **252 NLRB No. 105**
(U's picketing at E had recognitional or organizational object and is proscribed by Sec. 8(b)(7)(A) since E lawfully was represented by another U)

8050 WHERE VALID ELECTION CONDUCTED WITHIN PRECEDING TWELVE MONTHS - CLAUSE 8(b)(7)(B)

8050-0100 Generally

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL)**
(no valid election existed until Bd had certified the results, the point in time at which *all challenges and objections have been ruled upon or otherwise disposed*)

8050-2000 **Election among employees for whom recognition sought**

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL)**
(U's continuing recognitional picketing after election, not violative, since Bd had not resolved challenged ballots)

8050-4000 **Election pursuant to section 9(c)**

Retail Store Employees Union Local 214, Affiliated With United Food & Commercial Workers International Union, AFL-CIO & CLC (Pick-N-Save Warehouse Foods, Inc.) **252 NLRB No. 086**
(picketing to force E to recognize U, unlawful, where picketing commenced on two occasions w/i 12 months after valid 9(c) election; settlement agreement reached after first period of picketing set aside and Bd may reach earlier picketing which was subject matter of settlement agreement)

8075 WHERE PICKETING FOR MORE THAN REASONABLE TIME WITHOUT PETITION BEING FILED - CLAUSE 8(b)(7)(C)

8075-0100 **Generally**

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO (Earl J. Engle, Attorney on Behalf of R & F Grocers, Inc.) **252 NLRB No. 156**
(in 8(b)(7)(c) proceeding significant issue is whether U filed R-ptn; such issues as *alter ego, joint E-successorship* are defenses to not filing R-ptn but not to unlawful picketing)

8075-2000 **Reasonable time of picketing**

8075-2017 Not to exceed thirty days

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **252 NLRB No. 156**
(U's picketing E for over 30 days w/o filing ptn for purpose of securing recognition, unlawful; U not permitted to present evidence regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which U had no bargaining relationship, and another E with which had longstanding relationship, thus rendering picketing for continued ratherthan initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case and no ULP charge that would impede processing of R ptn)

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**
(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 059**
(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

Carpenters Local 316, United Brotherhood of Carpenters and Joiners of America, AFL-CIO **JD-(SF)-316-80**
(U's picketing of joint venture with informational area standards signs for more than 30 days violative where U's agents revealed to E at beginning of picketing that goal was representation and never made any attempt to learn economic status of joint venture, and demanded that joint venture sign agreement)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

Oil, Chemical and Atomic Workers International Union, Local 6-578 (D & M Truck Stop, Inc.) **JD-207-80**
(picketing for more than 30 days for recognitional purpose w/o filing of valid R ptn violative)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL)**
(U's post election recognitional picketing, not violative, since U filed ptn for election 28 days after commencement of picketing)

8075-2067 Tacking of periods of picketing

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) **252 NLRB No. 124**
(where U engaged in unlawful recognitional picketing and after hiatus of 1 day resumed picketing with informational purpose, taint of unlawful picketing not transferred to informational picketing)

Local 1506, Carpenters (Best Drywall Co.) **JD-(SF)-266-79**
(U held to have picketed E more than reasonable time where, notwithstanding it had picketed E at two different jobsites in two consecutive months each time for less than 30 days, it had nevertheless thereby picketed same E for total of more than 30 days w/o filing ptn for election)

8075-2092 Picketing at employer's different locations

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO (Earl J. Engle, Attorney on Behalf of R & F Grocers, Inc.) **252 NLRB No. 156**
(where E and U had collective-bargaining relationship at one location and E's sons opened same type of store at second location U's recognitional picketing at second store w/o filing representative petition violative)

8075-4000 **Filing of petition**

8075-4001 Generally

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO (Earl J. Engle, Attorney on Behalf of R & F Grocers, Inc.) **252 NLRB No. 156**
(in 8(b)(7)(c) proceeding significant issue is whether U filed R-ptn; such issues as *alter ego, joint E-successorship* are defenses to not filing R-ptn but not to unlawful picketing)

8075-8000 **Informational picketing not prohibited (second proviso, clause 8(b)(7)(C)**

8075-8001 Generally

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 059**
(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

8075-8025 Form of activity

8075-8025-3300 **Informational picketing**

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) **252 NLRB No. 124**
(picketing which U claimed informational held to be for recognition and thus unlawful where at rally immediately preceding start of picketing U officials stated: *this place will be U* and also *who needs the U-E)*

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) **252 NLRB No. 124**
(where U engaged in unlawful recognitional picketing and after hiatus of 1 day resumed picketing with informational purpose, taint of unlawful picketing not transferred to informational picketing)

8075-8050 Purpose of activity

8075-8050-9800 **Picketing for area standards**

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

Carpenters Local 316, United Brotherhood of Carpenters and Joiners of America, AFL-CIO **JD-(SF)-316-80**

8075-8050-9800—Cont.

(U's picketing of joint venture with informational area standards signs for more than 30 days violative where U's agents revealed to E at beginning of picketing that goal was representation and never made any attempt to learn economic status of joint venture, and demanded that joint venture sign agreement)

8075-8075 Except where having prohibited effect

8075-8075-3300 Effect not dependent upon intent

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 059**

(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

584 AGREEMENTS TO CEASE DOING BUSINESS

0100 GENERALLY

0120 NATURE AND PURPOSE OF PROSCRIPTION

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(activities and agreements that seek not to preserve traditional work of displaced Ees but to acquire work of other Ees are unlawful under congressional proscription)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(*Sec. 8(e)* proscribes *not secondary activity*, but *collective-bargaining contracts* whereby E ceases or agrees to c/d/b with any other person)

0140 CONSTRUCTION OF LEGISLATIVE HISTORY

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(legislative history of construction industry proviso demonstrates that Congress expressed its intent to exempt from proviso total process of transporting materials in spite of fact that some tasks in process might take place on construction site; in interpreting legislative history of proviso Bd has consistently adhered to narrow definition of jobsite work, refusing to apply proviso's coverage to various types of transportation work or to offsite work merely because such work could be done at construction site)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(E's transportation of gravel to work site held not to constitute onsite work and therefore not to be exempt according to Act's legislative history)

1200 FACTORS MATERIAL TO APPLICABILITY OF SECTION 8(e)

1250 AGREEMENT 'ENTERED INTO' WITHIN STATUTORY MEANING

1250-5000 Reaffirming, maintaining or enforcing agreement

Chicago Dining Room Employees, Cooks & Bartenders Union, Local 42 (Clubmen, Inc., d/b/a Gaslight Club, Palmer House) **248 NLRB No. 083**
(U held to have reaffirmed agreement and maintained enforceability of clause in agreement, where U demanded compliance with the agreement and instituted suit in order to compel compliance)

1275 OBJECTIVES PROSCRIBED

1275-6700 Cease doing business with any other person

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(coercion of contractor with whom U had dispute to cease employing materialman to haul gravel to jobsite, unlawful)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(*Sec. 8(e)* proscribes *not secondary activity*, but *collective-bargaining contracts* whereby E ceases or agrees to c/d/b with any other person)

1275-6733 What constitutes doing business

1275-6733-5000 Sale of capital assets

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's proposal which in effect would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, held not to relate to E's *doing business* w/i meaning of Sec. 8(e), since transfer of portion of E's business under that clause would involve no continuing relationship with the purchaser)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(proposal that would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, not unlawful, even if conveyance of portion of E's business operations, restricted by proposed clause, constituted *doing business* w/i meaning of Sec. 8(e); effect of clause is primary because it serves to benefit only E's own Ees, and does not seek to enlist E's aid in affecting labor relations of anyone who is not employer of those same Ees)

2500 EMPLOYEE OR UNION ACTION AUTHORIZED BY AGREEMENT

2501 GENERALLY

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(provision alleged to be violative of 8(e) not rendered lawful by another provision stating *any other exclusions from construction industry proviso, previously defined by NLRB or cts, shall continue to be applicable in interpreting (alleged unlawful provision)*; *explicit self-contained and clearly illegal contractual provision ... will not be purged of illegality by vague and general savings clause*)

2511 REFUSAL TO HANDLE PRODUCTS

2511-3300 Application of 8(e) proscription

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**
(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

2522 REFUSAL TO WORK

2522-3300 Application of 8(e) proscription

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(agreement providing for use of self-help to enforce maintenance of benefit levels by subcontractors and others with whom E did business at jobsite or elsewhere and authorizing strike or other economic means for enforcing performance of grievance procedure duties held unlawful; agreements may not authorize enforcement by other than judicial means)

2533 REFUSAL TO CROSS PICKET LINES

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(picket line clause broad enough on its face to apply to secondary picketing having no connection with disputed jobsite, unlawful)

2577 ASSESSMENT OF PENALTIES UPON CONTRACT BREACH OR NON-PERFORMANCE

2577-3300 Application of 8(e) proscription

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**
(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

2588 EXTENSION OF AGREEMENT TO NONSIGNATORY EMPLOYERS

2588—Cont.

Joint Council of Teamsters No. 42; et al. (Irvine Santa Fe Co.) **248 NLRB No. 082**
(provision which would require contractor to c/d/b with independent contractor dump truck owner-operators on any terms other than those applicable to unit Ee drivers under master agreement, violative, since not w/i construction industry proviso where owner-operators engaged in transportation of materials between construction sites controlled by different contractors, or between sites up to 10 miles apart controlled by same contractor; since proviso does not apply to jobsite deliveries which are only small part of basically offsite transportation, notwithstanding sites controlled by same contractor)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(signatory clauses allowing Es to do business only with subcontractors or persons maintaining agreement's benefit levels held secondary and unlawful)

3700 EMPLOYER ACTION LIMITED BY AGREEMENT

3740 PARTIAL RESTRAINT ON, OR CONDITIONING OF, SUBCONTRACTING

Joint Council of Teamsters No. 42; et al. (Irvine Santa Fe Co.) **248 NLRB No. 082**
(provision which would require contractor to c/d/b with independent contractor dump truck owner-operators on any terms other than those applicable to unit Ee drivers under master agreement, violative, since not w/i construction industry proviso where owner-operators engaged in transportation of materials between construction sites controlled by different contractors, or between sites up to 10 miles apart controlled by same contractor; since proviso does not apply to jobsite deliveries which are only small part of basically offsite transportation, notwithstanding sites controlled by same contractor)

3740-1700 Requiring subcontractor or lessee to be union signatory or agree to adhere to union contract

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

Chicago Dining Room Employees, Cooks & Bartenders Union, Local 42 (Clubmen, Inc., d/b/a Gaslight Club, Palmer House) **248 NLRB No. 083**
(contract provisions which require that, in event E leases portion of its premises where bargaining unit members are employed at time of lease, and if lessee employs any Ees in job classifications covered by agreement, then lessee must execute bargaining agreement or agree to be bound by its terms as condition precedent to lease transaction, unlawful, since the provisions have effect of U signatory clause; it requires lessee to become bound to the contract regardless of whether or not unit Ees lose their jobs)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(signatory clauses allowing Es to do business only with subcontractors or persons maintaining agreement's benefit levels held secondary and unlawful)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's proposed *leasing-licensing out* clause which would forbid E from licensing out its operations absent compliance with contract terms for licensee E's Ees, unlawful, since transfer under clause constitutes *doing business* w/i Sec. 8(e); proposed clause effectively controls labor relations of licensee-E and benefits U members generally rather than E's own Ees)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's proposed clause which prohibits contracting out work customarily performed by E's Ees unless that work is performed by U members, unlawful)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's proposed clause that would permit construction work to be performed by *outside contractor as are designated by E* only when such work was contracted out *under the jurisdiction* of U and when qualified U members were not available, unlawful)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's proposed clause that specified that *contracting, subcontracting, leasing and subleasing and construction work* would be *conducted in accordance with* requirement of other clauses, unlawful, since clause would require E to comply with other clauses found herein to be illegal)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

3740-5900 Work preservation provision

International Union, United Mine Workersand Peabody Coal Company **253 NLRB No. 20**
(clause which provides that work shall be performed by UMWA members to the extent and in manner permitted by law found to have illegal secondary objective, i.e., coercion of subcontractor's Ees in to UMWA membership)

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**
(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(U sought not to preserve but to acquire work for unit Ees)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

3750 LIMITATION UPON RENTAL OR USE OF FACILITIES

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's proposed *leasing-licensing out* clause which would forbid E from licensing out its operations absent compliance with contract terms for licensee E's Ees, unlawful, since transfer under clause constitutes *doing business* w/i Sec.

3750—Cont.

8(e); proposed clause effectively controls labor relations of licensee-E and benefits U members generally rather than E's own Ees)

3758 LIMITATION UPON USE OF INDEPENDENT CONTRACTORS

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

International Union, United Mine Workersand Peabody Coal Company **253 NLRB No. 20**

(clause which provides that work shall be performed by UMWA members to the extent and in manner permitted by law found to have illegal secondary objective, i.e., coercion of subcontractor's Ees in to UMWA membership)

3770 LIMITATIONS UPON CONDITIONS OF SALE OF CAPITAL ASSETS

3770-5000 Requiring purchaser to be union signatory

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposal which in effect would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, held not to relate to E's *doing business* w/i meaning of Sec. 8(e), since transfer of portion of E's business under that clause would involve no continuing relationship with the purchaser)

3780 DIMINUTION OF UNIT WORK

3780-3300 Unit work as defined by agreement

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

3780-6700 Fairly claimable unit work

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

4300 EMPLOYER ACTION REQUIRED BY AGREEMENT

5000 CONSTRUCTION INDUSTRY EXEMPTION

5014 SCOPE AND PURPOSE, GENERALLY

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(contention that definition of jobsite work in construction industry proviso of 8(e) should be indentical to definition of jobsite work in Davis-Bacon Act, rejected, since that Act broader in coverage as remedial statute than 8(e) proviso)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(transportation of materials between construction sites controlled by different contractors not w/i construction proviso whether or not both actual construction sites, nor is transportation of material to sites 10 miles apart controlled by same contractor w/i proviso since drivers spend little time on jobsite compared to offsite travel and purpose of proviso has little relevance to persons having such incidental contact with site)

5042 AGREEMENT RELATING TO CONTRACTING OR SUBCONTRACTING

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

(agreement providing for use of self-help to enforce maintenance of benefit levels by subcontractors and others with whom E did business at jobsite or elsewhere and authorizing strike or other economic means for enforcing performance of grievance procedure duties held unlawful; agreements may not authorize enforcement by other than judicial means)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

5056 WORK TO BE DONE AT CONSTRUCTION SITE

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(offsite activity not per se secondary activity w/i Section 8(e); jobsite limitation in construction industry proviso has no relevance to primary or secondary nature of activity as defined in *National Woodwork Manufacturers v. NLRB*)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(deliveries to and from jobsite not w/i construction industry proviso)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(mixing, delivery and pouring of readymix concrete; delivery of precast concrete pipe; bringing of tools, materials, and personnel to and from site of construction and delivery of landfill do not constitute jobsite work)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

(E's transportation of gravel to work site held not to constitute onsite work and therefore not to be exempt according to Act's legislative history)

6200 GARMENT INDUSTRY EXEMPTION

7500 AFFIRMATIVE DEFENSES

8700 SAVINGS CLAUSE

590 PREHIRE AGREEMENTS - SECTION 8(f)

0100 GENERALLY

2500 QUALIFICATION OF PARTIES TO ENTER AGREEMENT

5000 PERMISSIBLE CONDITIONS OF AGREEMENTS

5001 GENERALLY

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

5001-7500 Applies only to initial recognition situations

Construction Erectors, Inc. **252 NLRB No. 045**

(Bd held U achieved majority status under 9(a) in stable unit at time of execution of multisite contract, where payroll charts established a permanent complement of at least six unit ironworkers, U dispatched through its hiring hall at least a majority of E's ironworkers, such referrals switched from one project to another, and U-security provisions applied to all unit Ees' thus stable work force on date of execution of contract was distinguishable from those hired by a contruction industry E on project-by-project schedule with no personnel carryover)

Construction Erectors, Inc. **252 NLRB No. 045**

(repudiating multisite contract, violative, notwithstanding E's contention that it was unenforceable as pre-hire agreement, where, although first contract between E and U fell into category of Sec. 8(f) agreement, at least by time of the contract here in question, U had achieved majority status in stable unit of E's Ees)

Queen City Paving Co., Inc. **JD-(SF)-156-80**

(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec 8(f) was no defense because of existence of qcr)

7500 EFFECT OF AGREEMENT

7575 ESTABLISHMENT OF SECTION 8(d) BARGAINING OBLIGATION

7575-0100 Generally

Hageman Underground Construction; etc. **253 NLRB No. 007**

(non-U company found herein single E with company that executed 8(f) agreement held bound by agreement at all existing and future jobsites, where U at one time represented majority of Ees who constituted a permanent and stable group of backhoe operators and E did not generally hire on project-by-project basis; this established irrebutable presumption of majority status during length of contract and whether U enjoyed such status at time E repudiated contract irrelevant)

7575-5000 Must define projects or area to which applicable

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**

(E held obligated to recognize and bargain with U for prospective as well as current jobsites, since (a) E's Ees had tendered their designation cards w/i determinative payroll period, and (b) U had signed authorization cards from majority in unit of E's permanent Ees when it demanded recognition, so that contract was not 8(f) prehire contract valid only for current jobsite as E contended)

Land Equipment Inc. **248 NLRB No. 098**

(where E employs stable complement of Ees majority need not be established at each jobsite)

D'Angelo & Khan, Inc. **248 NLRB No. 062**

(where E entered into 8(f) prehire agreement with local when it first worked at jobsite w/i local's jurisdiction, its refusal to apply agreement to Ees at succeeding jobsite held not unlawful, since prehire agreement did not give rise to presumption of local's majority status at original jobsite; furthermore, regardless of local's majority status at original site, provisions of 8(a)(5) do not apply unless U can demonstrate its majority status at succeeding sites, record here showed Local did not have majority support at the succeeding site)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**

(repudiation of contract unlawful, where 8(f) pre-hire agreement was transformed into bargaining agreement when U achieved majority status in relevant bargaining unit composed of Ees at E's two construction projects rather than on project by project basis, and rebuttable presumption of continuing majority status applied to unit notwithstanding potential change in its Ee composition and eventual relocation to other, future projects)

8700 ENFORCEMENT OF AGREEMENT

The Carpenters District Council of North Central Texas v. North Texas Contractor Assoc. et al. **No. CA3-76-1151-F (D Ct. TX, Feb. 21, 1979 (unreported))**

(when U did not have majority status, it could not enforce contract provision which called for arbitration of disputes)

593 PICKETING AND STRIKES AT HEALTH CARE INSTITUTIONS (SECTION 8(g)

0100 GENERALLY

2000 ACTIVITY SUBJECT TO NOTICE REQUIREMENT

2025 FORMS OF ACTIVITY

2025-2000 Picketing

Bricklayers & Allied Craftsmen, Local 40 **252 NLRB No. 030**
(U's contention that notice requirements of Sec. 8(g) were inapplicable because U did not represent, or seek to represent, health care Ees or because health care Ees did not engage in picketing or other concerted refusal to work rejected; here, the picketing, directed at hospital although disavowing any appeal to hospital Ees, had potential to disrupt health care services at hospital, and was subject to notice requirements of Sec. 8(g))

2025-4000 Strikes

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(doctors' strike in sympathy with striking unionized Ees at health care institution held protected as to Sec. 8(g) notwithstanding lack of notice to E, in view of 8(g) language applying only to labor organizations and not individuals, legislative history focusing on large scale and not individual activity, and purpose of giving health care institutions enough notice to arrange for patient care - doctors here created no danger or risk of harm to patients)

2025-6000 Work Stoppages

Leisure Lodge Nursing Home **250 NLRB No. 134**
(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

Leisure Lodge Nursing Home **250 NLRB No. 134**
(half hour work stoppage at nursing home to present grievances, protected)

4000 NOTICE REQUIREMENT

4001 GENERALLY

Laborers', Local 1253 (St. Mary's Hospital of Roswell, Inc.) **248 NLRB No. 030**
(no notice required where health care institution is only secondary E)

4028 TO WHOM NOTICE MUST BE GIVEN

Laborers', Local 1253 (St. Mary's Hospital of Roswell, Inc.) **248 NLRB No. 030**
(U's failure to conform to Sec. 8(g) requirements for giving notice to FCMS and health care institution not violative, where U made it clear it was picketing only primary E contractor and limited picketing to places reasonably close to primary dispute's situs, and secondary health care institution could have established reserve gates but did not do so)

4036 BY WHOM NOTICE MUST BE GIVEN

Leisure Lodge Nursing Home **250 NLRB No. 134**
(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(walkout by two nurses aides held not to have lost protection under Sec. 8(g), notwithstanding their failure to give 10 days' notice of intent to strike, since Sec. 8(g) does not apply where labor organization is not involved, and strike here did not involve labor organization, and E and U were not then discussing issue which precipitated strike)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(doctors' strike in sympathy with striking unionized Ees at health care institution held protected as to Sec. 8(g) notwithstanding lack of notice to E, in view of 8(g) language applying only to labor organizations and not individuals, legislative history focusing on large scale and not individual activity, and purpose of giving health care institutions enough notice to arrange for patient care - doctors here created no danger or risk of harm to patients)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

6000 CONFORMANCE OF ACTIVITY TO NOTICE

6050 ACTIVITY COMMENCED SUBSEQUENT TO TIME NOTICED

Bricklayers & Allied Craftsmen, Local 40 **252 NLRB No. 030**
(U's picketing of hospital 10 days after time it had specified in notice it had given to hospital and FMCS, violative where picketing did not occur w/i reasonable time period after scheduled date; U gave no further notice of contemplated picketing and no explanation for delay in commencing picketing or for failure to give another, timely notice)

8000 THREATS TO STRIKE, PICKET OR ENGAGE IN WORK STOPPAGE

Leisure Lodge Nursing Home **250 NLRB No. 134**
(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

596 PROCEDURE IN ULP PROCEEDINGS

0100 GENERALLY

0125 APPLICABILITY AND EFFECT OF APA

0125-9200 Section 10--application; definitions (5 USC Sec. 701(a)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

0125-9600 Section 10(a)--right of review (5 USC 702)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

0137 APPLICABILITY OF FEDERAL RULES OF EVIDENCE

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**

(contention that U's presettlement discussions with Ee-members concerning ULP charges filed with Bd against U by one of them were inadmissible as privileged conversations under Rule 408 of Federal Rules of evidence, rejected)

0175 EFFECT OF PRIOR PROCEEDINGS (See also, RES JUDICATA 750-0000)

Schorr Stern Food Corp. **248 NLRB No. 050**

(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

0175-5000 Where ULP proceeding based in whole or part upon facts certified in R proceeding

0175-5025 No relitigation in related subsequent ULP proceeding of issues resolved in R proceeding

Hedison Manufacturing Company **249 NLRB No. 096**

(where in prior R proceeding challenge to ballot of floorlady on ground she was supervisor was overruled, and in instant ULP proceeding ALJ found he was prohibited by R/R Sec. 102.67(f) from relitigating her status, Bd ruled that, since she was not alleged to have engaged in any ULPs and her status would not affect finding of U's majority support, it was not necessary to make new determination as to her status or to consider GC's assertion that such determination would be consistent with Bd's Serv-U-Stores decision (Cote))

0175-5025-2500 Where resolved by Board

Sav-On Drugs, Inc. **253 NLRB No. 045**

(E not entitled to rely on RD's findings in underlying R case as defense in ULP case where Bd granted review of RD's decision, since decision was thus not final, and decision and findings were subject to reversal; nor did lack of stay of RD's order justify E's reliance on RD's findings in ULP case)

0175-5025-3300 Where stipulated by parties

Flair Molded Plastics, Inc. **250 NLRB No. 017**

(that U is a labor organization)

0175-5025-7500 Where request for review denied

Madison Detective Bureau, Inc. **250 NLRB No. 062**

0175-5050 Issues as to which relitigation precluded

0175-5050-6700 Objections to election

Wright & Lopez of Alabama **250 NLRB No. 051**

0175-5075 Issues as to which relitigation permitted

0175-5075-1900 Actions constituting unfair labor practices

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(Bd's findings and conclusions as to objections to election in R case are not binding upon ALJ where same conduct is alleged as ULPs, since issues drawn are different in the two types of proceedings)

N.L.R.B. v. Markle Manufacturing Company of San Antonio **623 F.2d 1122 (C.A. 5, 1980)**

(doctrine of collateral estoppel did not preclude Bd from determining whether E committed ULPs by failing to reinstate economic strikers who allegedly committed charged violence where fact issue of such misconduct was not determined in previous case, in which Bd acting on E's complaint charging strike violence and misconduct by U agents, entered consent order agreed to by E and U that directed cessation of strike violence; moreover, Bd was not barred from litigation of violence issue on theory that Bd was taking inconsistent positions with respect to same matter in successive suits)

0175-5075-5000 Supervisory status of employee

Hedison Manufacturing Company **249 NLRB No. 096**

(where in prior R proceeding challenge to ballot of floorlady on ground that she was supervisor was overruled, Bd held her status could be relitigated in instant ULP proceeding since she was expressly alleged to be supervisor and to have engaged in unlawful conduct in her supervisory capacity (Di Carlo))

Cardinal Heating and Cooling, Inc. **JD-835-79**

(although agreement between U and E involving exclusion of Ee from bargaining unit because he was supervisor may be of *persuasive relevance* in subsequent complaint proceeding dealing with representation, it is not conclusive and does not preclude litigation of supervisory issue in *unrelated* ULP proceeding)

0181 EFFECT OF PENDING PROCEEDINGS

0181-5000 Judicial proceedings

Miami Foundry Corporation **252 NLRB No. 002**

(mtn to stay ULP proceedings pending final disposition of ptn for arrangement under Chapter XI of Bankruptcy Act denied where Bd has exclusive jurisdiction to hear and decide ULP cases to final disposition)

0400 LIMITATION OF ACTIONS

0420 SECTION 10(b) 6-MONTH LIMITATION

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**

(ULP allegations not time barred where original charge, naming subsidiary as E, whose assets and liabilities were transferred to respondent, was timely filed, and amended charge, while filed outside 10(b) period, was identical to original charge except for naming respondent as E; failure to originally name respondent as E was clearly a misnomer and is not fatal to pleadings)

Charmer Industries, Inc. **250 NLRB No. 031**

(where charge and C alleged that Es unilaterally changed procedures for collecting c.o.d. payments by having salesmen replace delivery drivers, represented in another unit, in making collections, ALJ rejected Es' contention that C was barred under Sec. 10(b) on ground that change itself came about through bargaining regarding duties of drivers and that, since neither charge nor C alleged unlawful failure to bargain about effects of change upon working conditions of salesmen, there was a variance between allegations and proof which required dismissal of proceeding)

Actors' Equity Association **247 NLRB No. 172**

(allegations of enforcement of disparate U dues with respect to Ee held not timely, where only action taken by U w/i 10(b) period was U's counterclaim in Ee's ct suit, for dues U had previously determined Ee owed; meanwhile, levy of dues, Ee's appeal therefrom, and rejection of appeal occurred more than 6 months before filing of charge)

596-PROCEDURE IN ULP PROCEEDINGS

0420-0100 Generally

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(burden of proving facts which support defense of limitations necessarily rests upon one who pleads it, since statute of limitations contained in Section 10(b) is affirmative defense)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

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N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

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N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(purpose of application of Sec. 10(b) to evidentiary matters not circumvented by introduction of pre-10(b) period events here where there is no risk that evidence has lost its probative value and there had been no intervening change in circumstances)

0420-5000 Runs from effective date of ULP

Associated Grocers **253 NLRB No. 005**
(charge barred by 10(b) where U learned during negotiations that job would be eliminated but took no action)

Bay Medical Center, Inc. **252 NLRB No. 159**
(contention that charge alleging violation of Section 8(a)(5) not filed w/i 10(b) period, notwithstanding Respondent had refused to bargain for period of four years until *legalities of unit question are decided* during which period it was engaged in litigation before Bd and cts, where complaint herein alleged unilateral reduction in Ees' working hours upon their transfer to new facility and unit question could have been resolved prior to completion of new facility thus permitting Respondent to bargain by its own admission; 10(b) period commenced at time of E's unilateral reduction of hours)

Dardanell Enterprises, Inc. **250 NLRB No. 050**
(charge not barred by fact that U's initial request to bargain outside 10(b) period since Bd treats request as continuing)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(charge barred where outside 10(b) period)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**
(remand to Bd for further consideration of use of date of filing charge rather than date of refusal to bargain in measuring 10(b) limitation period, where ALJ found that benchmark date for exclusion of evidence was date when ULP charge was filed, while E contended that when Act is not being given its literal application to filing of charge but is being used to bar evidence in defending against such charge, 10(b) period should be measured from time of E's refusal to bargain)

0420-5050 What constitutes effective date

Bay Medical Center, Inc. **252 NLRB No. 159**
(Section 10(b) period commenced at time of E's implementation of unilateral reduction in Ees' hours upon their transfer to new facility, rather than upon reduction in hours upon prior temporary transfer to another existing facility pending completion of new facility, or upon E's announcement of contemplated changes, since change upon final act of transfer was subject of complaint)

Island Typographers, Inc. **252 NLRB No. 003**
(10(b) period begins to run when U first has notice of unlawful unilateral change)

American Bakeries Co., Inc. **249 NLRB No. 170**
(date of actual discharge, and not date of notice of intent to discharge Ee, determined timeliness of charge; events occurring before discharge formed background for charge)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(by delivering payroll records at arbitration hearing, and thereafter allowing U to inspect other records in connection with bargaining agreement, E did not repudiate bargaining relationship sufficiently to begin running of 10(b) period)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(Bd precluded from remedying E's failure to make benefit payments to trustee prior to 10(b) period as U had knowledge of such nonpayment and took no action under Act to get E to comply with contract, however, every monthly failure to submit contractual payment to fund is separate and distinct violation and E liable for delinquincies w/i 10(b) period)

General Marine Transport Corporation v. N.L.R.B. **619 F.2d 180 (C.A. 2, 1980)**
(10(b) period began to run from date that charging party could have filed charge for E's initial repudiation of multi-E association contract since E's subsequent repeated repudiations of contract were only repetitions of its earlier conduct rather than separate ULP's)

General Marine Transport Corporation v. N.L.R.B. **619 F.2d 180 (C.A. 2, 1980)**
(10(b) period begins to run from time of initial repudiation of contract and actions taken as result of this repudiation, which normally would be violative, are time barred if charge is filed more than 6 months after repudiation as charge *inescapably grounded* on time barred event; namely, repudiation of contract; ct rejected *continued violation* theory)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(E's closing of part of business rather than deal with U and reopening department with new Ees violative at time of reopening as ct treated closing of 1 of 2 departments as temporary shutdown of total operation since closing of department not doneto dampen unionism in other department)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(notwithstanding supervisor (also president of U) did not negotiate bargaining agreement w/i 6 month period of charges being filed, 10(b) period did not begin to run because as U President he was responsible for processing grievances; though only 1 grievance filed and it became subject of ULP charge in instant case does not alter result because official's dual role itself may account for lack of grievances)

N.L.R.B. v. Allied Products' Corporation, Richard Brothers Division **629 F.2d 1167 (C.A. 6, 1980)**
(contrary to E's contention, Bd did not disregard ct's remand to reconsider Bd's make-whole remedy in light of ct's theory of applicability of 10(b) limitations period which differs from that upon which Bd relied, where Bd accepted ct's finding that charging party did not become aware of E's unlawful suspension of merit wage review program until certain date, agreed that 10(b) limitations period was tolled until then, and consequently expanded its make whole remedy to include those Ees who had suffered before that date by reason of suspension of the scheme)

0420-6200 Six-month period dates from first charge

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U to reimburse each applicant or Ee who made payments to U for its referral system when in actuality no such system existed; liability limited by Section 10(b) to 6-month period prior to filing and service of original charge)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**
(remand to Bd for further consideration of use of date of filing charge rather than date of refusal to bargain in measuring 10(b) limitation period, where ALJ found that benchmark date for exclusion of evidence was date when ULP charge was filed, while E contended that when Act is not being given its literal application to filing of charge but is being used to bar evidence in defending against such charge, 10(b) period should be measured from time of E's refusal to bargain)

0420-6250 Reinstatement of charge after withdrawal

Nevada County Publishing Co., d/b/a **The Union** — **251 NLRB No. 143**
(amendment to complaint to include additional allegation of ULP which had previously been administratively dismissed from original charge by RD not time-barred by 10(b))

0420-8700 Amendment of charge

J. P. Stevens and Company, Inc. — **247 NLRB No. 044**
(alleged violations subject of separate charge filed more than 6 months after events alleged as unlawful held not time-barred since such events were brought into instant litigation by amendment to broadly phrased complaint which alleged numerous incidents of interference and discrimination and incidents at issue were of same character as others alleged as unlawful in original complaint; under the circumstances, specific charge was superfluous and allegations were sufficiently related to original charges and complaint to be amended)

Leyendecker Paving, Inc. — **247 NLRB No. 010**
(although charge says nothing about *more onerous* work, ALJ allowed amendment to complaint over 10(b) objection, where other allegations properly flowed from charges, albeit in most general way, and amended charge was closely related to those *violations*)

0420-8775 May relate back to original charge

Nevada County Publishing Co., d/b/a **The Union** — **251 NLRB No. 143**
(amendment to complaint to include additional allegation of ULP which had previously been administratively dismissed from original charge by RD not time-barred by 10(b))

J. M. Tanaka Construction, Inc. — **249 NLRB No. 028**
(amendment of C to allege additional violation proper where sufficiently related to allegations in original C notwithstanding would otherwise be outside 10(b) period)

0440 CONSIDERATION OF TIME-BARRED EVENTS AS BACKGROUND TO EXPLAIN LATER EVENTS PERMISSIBLE

Electrical Workers, Local 1701 (Dynalectric Company) — **252 NLRB No. 119**
(while U representative's conduct outside 10(b) period may be used to ascertain his motive for action taken w/i such period, it is not to be inferred that he was motivated by unlawful considerations in his refusal in instant case to refer non-U applicants, in absence of evidence demonstrating that his actions herein were mere continuation of his prior conduct)

0440-0100 Generally

S. L. Industries Inc. and Extruded Products, Corp. — **252 NLRB No. 151**
(evidence adduced at hearing as to execution of contract between E and minority U and received before complaint was amended to show preferential treatment to U, admissable to show E animus to petitioner and as bearing on credibility of witness, E's president)

0440-1200 Where purpose is for fuller understanding of contention

Pandair Freight, Inc. — **253 NLRB No. 134**
(although E's memo dated outside 10(b) period could not provide basis for ULP complaint, it was compelling background evidence of E's hostility to Ee's U activities and its intention to discover pretextual rationale for Ee's discharge should he persist in engaging in U activities)

The Motor Convoy, Inc. — **252 NLRB No. 175**

Cumberland Farms Dairy, Inc. — **250 NLRB No. 140**
(supervisor's statements made outside 10(b) period that E could not fire one Ee for signing U authorization card or stop another Ee from joining U although not usable as evidence of ULPs, could serve as indicator of motivation of supervisor attributable to E)

American Bakeries Co., Inc. — **249 NLRB No. 170**
(date of actual discharge, and not date of notice of intent to discharge Ee, determined timeliness of charge; events occurring before discharge formed background for charge)

Local 394, Laborers' (Building Contractors Association of New Jersey) — **247 NLRB No. 005**
(U's failure to refer alleged discriminatees outside 10(b) period admissible as evidence of animosity and as background to support finding of unlawful refusal to refer w/i 10(b) period)

Pick-Mt Laurel Corporation v. N.L.R.B. — **625 F.2d 476 (C.A. 3, 1980)**
(contrary to Bd's holding that Sec. 10(b) precluded E from relying on execution of illegal prehire agreement by predecessor E as basis to support reasonably based doubt of U's majority status, ct held that, even though successor E could not use pre-10(b) evidence to nullify contract, E should be permitted to admit evidence to shed light upon its refusal to bargain as background evidence buttressing E's analysis of various timely events which allegedly gave rise to its good faith doubt of majority status)

N.L.R.B. v. Southern Plasma Corp. — **626 F.2d 1287 (C.A. 5, 1980)**

N.L.R.B. v. Laredo Coca Cola Bottling Company — **613 F.2d 1338 (C.A. 5) (1980)**
(ALJ's consideration of supervisor's statements, held proper notwithstanding the statements were made more than six months before charge was filed; ALJ considered the statements as background evidence for *adducing E's motivation for its acts w/i 10(b) period*)

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO — **624 F.2d 846 (C.A. 8, 1980)**

0440-5000 Enforcement within period of contract illegal in execution because of time-barred events

Actors' Equity Association — **247 NLRB No. 172**
(Bd's consideration of maintenance and enforcement of U security agreements and U's dues structure held not barred; since violation rests on U's dues structure in conjunction with contracts, circumstances at time of execution of contracts are not critical; moreover, there was at least one instance of enforcement of U security provision w/i 10(b) period; contention that dues checkoff was *benign* because U did not seek imposition of job related sanction to compel dues payment, and such *benign* acts are not ULPs, rejected)

0440-7500 Minority status of union recognized before limitations period

S. L. Industries Inc. and Extruded Products, Corp. — **252 NLRB No. 151**

Pick-Mt Laurel Corporation v. N.L.R.B. — **625 F.2d 476 (C.A. 3, 1980)**
(contrary to Bd's holding that Sec. 10(b) precluded E from relying on execution of illegal prehire agreement by predecessor E as basis to support reasonably based doubt of U's majority status, ct held that, even though successor E could not use pre-10(b) evidence to nullify contract, E should be permitted to admit evidence to shed light upon its refusal to bargain as background evidence buttressing E's analysis of various timely events which allegedly gave rise to its good faith doubt of majority status)

Pick-Mt Laurel Corporation v. N.L.R.B. — **625 F.2d 476 (C.A. 3, 1980)**
(where E proferred defense of good faith doubt of U's majority status, ct held E could reasonably consider pre-10(b) circumstances because *sweetheart* relationship evidenced by unlawful prehire contract entered into by predecessor E sheds light on its commission of independent ULP in assisting U w/i 10(b) period; however, since successor E did not make clear the relationship, if any, between unlawful assistance during 10(b) period and its claim of good faith doubt, ct deemed it best left to Bd, which had not previously considered issue, to consider it in the first instance)

0460 LIMITATION NOT APPLICABLE TO CONTINUING ULP

Child Day Care Center, Verona, Virginia and Baltimore Regional Joint Board, Amalgamated Clothing and Textile Workers Union Health and Welfare Fund — **252 NLRB No. 164**
(Sec. 10(b) no bar to finding of violation since, after E's assistance in original establishment and recognition of U in pre 10(b) period, E's assistance to U continued into 10(b) period where E allowed U to use its premises to hold meetings during which Ees were paid, and U business agent who handled grievance of Charging Party w/i 10(b) period was on broad of trustees of E)

Dardanell Enterprises, Inc. — **250 NLRB No. 050**
(charge not barred by fact that U's initial request to bargain outside 10(b) period since Bd treats request as continuing)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. — **249 NLRB No. 003**
(Bd precluded from remedying E's failure to make benefit payments to trustee prior to 10(b) period as U had knowledge of such nonpayment and took no action under Act to get E to comply with contract, however, every monthly failure to submit contractual payment to fund is separate and distinct violation and E liable for delinquincies w/i 10(b) period)

Local 1115, Joint Board, Nursing Home & Hospital Employees---Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) — **248 NLRB No. 167**
(U's mtn to dismiss C as time-barred under 10(b), denied, where GC alleged that a number of U's actions occurred w/i 6 months of filing of charge, and mtn to dismiss under 10(b) in prior proceeding was denied because U's refusal to bargain was alleged to be a continuing violation)

United States Postal Service — **248 NLRB No. 002**
(issuance of complaint alleging that basic arrangement between E and U by which they restricted power of Ees to revoke checkoff to single annual event rather than at will and effective twice yearly as prior to enactment of exception to NLRA embodied in Section 1205(b) of Postal Reorganization Act, not barred by Section 10(b), notwithstanding that the ULP charge was filed after more than five years subsequent to date when E and U made alleged basic arrangement; the arrangement was continued to at least time of hearing herein)

General Marine Transport Corporation v. N.L.R.B. — **619 F.2d 180 (C.A. 2, 1980)**

0460—Cont.

(10(b) period begins to run from time of initial repudiation of contract and actions taken as result of this repudiation, which normally would be violative, are time barred if charge is filed more than 6 months after repudiation as charge *inescapably grounded* on time barred event; namely, repudiation of contract; ct rejected *continued violation* theory)

0465 TOLLING OF PERIOD

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(charge held timely filed where although events on which charged was based, E's hiring of separate non-U carpentry crew, occurred before 10(b) period, they were not known by U until 10(b) period, because E fraudulently concealed their occurrence by assuring U that it would no longer employ carpenters, thus tolling 10(b) period)

0600 AVAILABILITY OF BOARD PROCESSES TO PARTIES ENGAGING IN INVIDIOUS DISCRIMINATION

0700 FURTHER CONSIDERATION, RECONSIDERATION

0800 CHARGE

0855 TIMELINESS OF SERVICE TO STOP 10(b) PERIOD

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though 6-month period lapsed on a Sunday, a day before charges were served through mail, ct held that, pursuant to Bd's R/R, period extended to following day, Monday, making service of charge by mail on that day, as well as U's filing of charges, timely)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though 6-month period lapsed on a Sunday, a day before charges were served through mail, ct held that, pursuant to Bd's R/R, period extended to following day, Monday, making service of charges by mail on that day, as well as U's filing of charges, timely)
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N.L.R.B. v. Preston H. Haskell Company

0866 AMENDMENT OF CHARGE

0866-2500 Not equivalent to withdrawal of original charge

Charge Card Association **247 NLRB No. 119**
(ammended charge dropping particular allegation is withdrawal of charge in that particular)

0877 WITHDRAWAL OF CHARGE

0877-0100 Generally

APD Transport Corp. and Its Alter Ego, National Book Consolidators, Inc. **253 NLRB No. 056**
(mtn for summary judgment granted where E failed to show good cause for failure to file timely answer, and request to withdraw charges and dismiss complaint because of settlement agreement denied since settlement agreement did not provide substantial remedy, some Ees objected to settlement terms of private settlement agreement, and settlement agreement would not effectuate policies of Act)

0888 DISMISSAL OF CHARGE

0888-0100 GENERALLY

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**
(RD empowered to reverse original dismissal of Ee's charge, notwithstanding that Ee's appeal of RD's dismissal of charge was still pending; since Ee's appeal remained alive, E remained on notice that a charge might still be brought contesting her discharge)

0888-6700 Appeal to General Counsel from RD dismissal

0888-6767 Reinstatement of charge

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(where after dismissing allegation of unlawful discharge from original charge, RD, upon charging pary's appeal to GC, reconsidered and again included deleted charge, Bd's overruling ALJ's refusal to permit GC to amend complaint to include deleted charge, proper, since charge remained alive and pending during appeal process)

1200 PARTIES

1220 CHARGING PARTY

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that charging party, E's representative has no standing or valid interest permitting him to file charge in instant 8(b)(1)(B) proceeding, rejected, in view of R/R Sec. 102.9)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(contention that charging party, E's bargaining representative, was equitably barred in inst 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since *clean hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

1260 NECESSARY PARTIES

1260-0100 Generally

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(exceptions taken by respondents as to correct name of one of respondents held untimely where respondents never raised issue as to correct name of respondent until exceptions were filed with Bd and respondents did not contend that they suffered any prejudice due to use of alleged incorrect name)

N.L.R.B. v. Doug Neal Management Company **620 F.2d 1133 (C.A. 6, 1980)**
(enforcement denied where order not supported by substantial evidence as Ees discharged because E installed automated equipment which eliminated work of Ees, and indispensable party, owner of building, not joined; making building manager party not sufficient, especially where Bd ordered reinstatement of 3 discharged Ees)

1260-1500 Parent of subsidiary

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(where parent company was not named in proceeding until after ct remanded to Bd, it will not be named as R as it was never afforded opportunity to defend itself against ULP charges or litigate its relationship with E; determination can be made at compliance stage of proceeding)

1260-8000 Trustee in bankruptcy

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(deletion of trustee in bankruptcy as party respondent from original complaint pursuant to ct order does not bar GC from raising issue of trustee's derivative liability for first time in backpay proceeding)

1260-8500 International Union

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) **252 NLRB No. 181**
(although C unclear, international U treated as Respondent because ct participated in negotiations, insisted upon inclusion of R clause in contract, was named in charge, served with pleadings and required to effectuate full relief)

1290 ADEQUACY OF IDENTIFICATION OF PARTIES

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(inclusion in make-whole order of all nonmember applicants for job referral as well as individual charging parties, proper where amended charge and consolidated complaint alleged that Ees who were not members of U and applicants for employment who were not members suffered discrimination so that U was put on notice as to who were alleged to be discriminatees; further, nature of evidence adduced at hearing put U on notice of allegation that its referral system inherently favored members over nonmembers)

1600 SERVICE OF DOCUMENTS

1683 SERVICE OF CHARGE OR COMPLAINT

1683-8000 Date of service is date of mailing

St. John Medical Center **252 NLRB No. 077**
(timely for 10(b) purposes)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though charges were received 2 days after mailing date)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though charges were received 2 days after mailing date)

2000 CONDUCT OF INVESTIGATION

2010 CASE FILES

Schorr Stern Food Corp. **248 NLRB No. 050**
(although documents pertaining to correspondence between respondent and RD, and also internal memorandum between GC and RD, had erroneously been placed in *formal* instead of *informal* case file, Bd held backpay proceed-

2010—Cont.

ing before ALJ was not prejudiced as result, and did not require ALJ to disqualify himself from case or to dismiss backpay specification; documents were either not relevant to backpay proceeding or were otherwise not prejudicial, and E's counsel was given full opportunity at hearing to examine documents)

Scharr Stern Food Corp. **248 NLRB No. 050**
(documents which had been erroneously placed in *formal* instead of *informal* case file in backpay proceeding before ALJ, entered in rejected exhibit file, rather than merely being marked for identification and forwarded to GC's office for inclusion in informal file)

2400 RULINGS AND AUTHORITY OF REGIONAL DIRECTOR

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**
(RD empowered to reverse original dismissal of Ee's charge, notwithstanding that Ee's appeal of RD's dismissal of charge was still pending; since Ee's appeal remained alive, E remained on notice that a charge might still be brought contesting her discharge)

2425 TO TAKE SETTLEMENTS

Ramona A. Drobena, et al. v. N.L.R.B. **612 F.2d 1095 (C.A. 8)**
(where parties stipulated that U had violated 8(b)(1)(A), ct found no abuse of agency discretion when Bd, in accordance with its long-standing policy, entered consent cease-and-desist order against U but did not require U to pay backpay to individual Ees who lost work on account of U's unlawful practices)

2450 Authority to issue complaint

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final,* must be applied *prospectively* only)

2800 SETTLEMENTS

2801 GENERALLY

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**
(contention that U's presettlement discussions with Ee-member involved herein and fellow-member who had filed ULP charges against U were inadmissible as privileged conversations under Federal Rules of Evidence, and that U's conduct with respect to member herein prior to fellow-member's settlement is barred from litigation, rejected; fellow-member's case, not that of member herein, was settled and latter's expulsion from U and filing of charges with Bd occurred several months after settlement of fellow-member's case; consequently, expulsion of member herein was independent of fellow member's settlement agreement)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(contrary to ALJ's misgivings as to whether any presettlement conduct should be considered at all, Bd held that, based on E's postsettlement ULP, its presettlement conduct clearly may be basis for further ULP findings)

Thermo Transport, Inc. **JD-584-80**
(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(ct discusses Bd's procedures and its R/R dealing with various kinds of agreements settling ULP cases)

2801-2000 Purpose and objectives

APD Transport Corp. and Its **Alter Ego,** *National Book Consolidators, Inc.* **253 NLRB No. 056**
(mtn for summary judgment granted where E failed to show good cause for failure to file timely answer; and request to withdraw charges and dismiss complaint because of settlement agreement denied since settlement agreement did not provide substantial remedy, some Ees objected to settlement terms of private settlement agreement, and settlement agreement would not effectuate policies of Act)

Service and Hospital Employees International Union, Local 150, AFL-CIO (Watertown Health Care Centers, Inc., etc.) **JD-588-80**

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(to avoid unnecessary litigation)

2801-4000 Policy of Board

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**
(Bd reversed ALJ's finding that U unlawfully punished Ee-member by having him discharged for filing ULP charges against U with Bd, where alleged conduct by U occurred prior to date when settlement covering member's charges was executed; it is Bd policy to bar presettlement conduct from ULP litigation, and there was no contention that any of the exceptions to such policy apply)

2801-6000 Authority and discretion of Board

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(Bd has wide discretion in determining whether representation election has been fairly conducted and its decision warranted special respect on review; however such discretion is not unlimited)

2801-7500 Conditions of settlement

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

2801-8000 Effect of nonadmissions clause

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(Settlement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO **DS-1367-80 (06/01/80)**
(charging party's objection to broad nonadmission clause because clause might preclude contempt citation in ct of appeal or jeopardize possibility of Section 303 suit, rejected, since contempt not precluded if warranted and Federal Rules of Evidence precludes use of settlement stipulation to establish Respondent's liability; further, substantial remedy provided outweighed possible detriment that language might prevent introduction of Settlement Stipulation for purposes permissible under Federal Rules)

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 **DS-1364-80**
(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd's administrative action; and (3) limitations in clause upon charging party's rightto use stipulation would deprive it of due process of law; see also DS-1366-80)

N.L.R.B. v. Markle Manufacturing Company of San Antonio **623 F.2d 1122 (C.A. 5, 1980)**
(waiver provision of settlement stipulation, pursuant to which Bd entered consent order agreed to by E and U directing cessation of strike violence by U, applied only to proceeding in which stipulation was made; application to all other cases in which alleged U violence might be issue would destroy effect of U's nonadmission clause in consent order)

2801-8500 Effect of waiver of right to reinstatement

N.L.R.B. v. Markle Manufacturing Company of San Antonio **623 F.2d 1122 (C.A. 5, 1980)**
(waiver provision of settlement stipulation, pursuant to which Bd entered consent order agreed to by E and U directing cessation of strike violence by U, applied only to proceeding in which stipulation was made; application to all other cases in which alleged U violence might be issue would destroy effect of U's nonadmission clause in consent order)

2820 FORMAL SETTLEMENTS

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(informal settlement agreements should be scrutinized more closely than formal agreements)

2820-5000 Board order

Accessory Control and Equipment Corporation **248 NLRB No. 001**
(where parties did not agree to include in formal settlement agreement provision for ct enforcement, Bd refused to amend ALJ's recommended order to so provide)

2840 INFORMAL SETTLEMENTS

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(informal settlement agreements should be scrutinized more closely than formal agreements)

2840-4000 Approval of

Thermo Transport, Inc. **JD-584-80**
(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

2860 UNILATERAL SETTLEMENTS

2860-1400 Authority of General Counsel and Board to settle with less than all parties

Service and Hospital Employees International Union, Local 150, AFL-CIO (Watertown Health Care Centers, Inc., etc.) **JD-588-80**

2860-4900 Opportunity to inspect investigatory file

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 **DS-1364-80**
(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd's administrative action; and (3) limitations in clause upon charging party's rightto use stipulation would deprive it of due process of law; see also DS-1366-80)

2860-7000 Consideration of objections

2860-7037 By Administrative Law Judge

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

2860-8400 Basis of objections

2860-8410 Other type of proceedings more appropriate

2860-8410-5000 Hearing

Service and Hospital Employees International Union, Local 150, AFL-CIO (Watertown Health Care Centers, Inc., etc.) **JD-588-80**
(charging party's request that proceeding be litigated rejected where settlement agreement fully remedied allegations of complaint; nor does desire to assure res judicata justify litigation)

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(Settlement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

United Mine Workers of America **DS-1311-80 (02/04/80)**
(objection to Stipulation because pattern of unlawful conduct could only be interdicted by litigating cases before ALJ, Bd and cts, and U's unlawful conduct such that it requires specific remedial relief found w/o merit where Settlement remedies all ULP charges in C and in event U does not comply Bd is empowered to seek contempt in circuit ct)

2860-8420 Remedy provisions insufficient

2860-8420-1700 Notice provisions inadequate

West Coast Industrial Relations Association, Inc., N.C. **DS-1434-80**
(objections that settlement stipulation (1) did not name individual Ees subject to c/d order, (2) did not require Notice to be posted at E's clients' facilities but permitted posting at 1 client's facility, (3) included nonadmission clause and (4) did not require U pay legal costs and fees incurred by Bd and E, held w/o merit, since settlement applied to *all* Ees of E, E's clients not subject to c/d order, nonadmission clause, alone, no basis for disapproving settlement; since case not litigated but settled, Settlement Stipulation adequately remedies alleged ULPs w/o assessing costs and fees to U)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company) **DS-1309-80 (01/24/80)**
(notice posting requirement which called for posting at Respondents business offices, meeting halls and other places where notices to members are customarily posted and posting at company's facility, if it is willing, constitutes adequate notice of settlement)

2860-8420-6200 Order provisions inadequate

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notiwthstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

Atlantic, Cape May, etc., Building Trades Council, et al. (Altemose Construction Company) **DS-1413-80**
(objection to stipulation that although Us were permitted to picket unlawfully over 3-1/2 months prior to settlement, they will suffer no detriment held w/o merit; statute does not provide for punitive measures against respondents and purpose of Bd remedies is to resolve the *status quo ante*; see also DS-1414 and DS-1415)

West Coast Industrial Relations Association, Inc., N.C. **DS-1434-80**
(objections that settlement stipulation (1) did not name individual Ees subject to c/d order, (2) did not require Notice to be posted at E's clients' facilities but permitted posting at 1 client's facility, (3) included nonadmission clause and (4) did not require U pay legal costs and fees incurred by Bd and E, held w/o merit, since settlement applied to *all* Ees of E, E's clients not subject to c/d order, nonadmission clause, alone, no basis for disapproving settlement; since case not litigated but settled, Settlement Stipulation adequately remedies alleged ULPs w/o assessing costs and fees to U)

Local 598, Plumbers (Guy F. Atkinson Company, etc.) **DS-1426-80**
(objections to settlement stipulation, that (1) order did not require respondent to c/d ULPs against *other persons*, (2) work in dispute described too narrowly, and (3) settlement contained nonadmission clause, dismissed where GC advised party that his review of stipulation revealed that it provided full and complete remedy for ULPs alleged; inclusion of nonadmission clause not valid basis for objection where settlement effectuated purposes of Act)

Teamsters Joint Council No. 39 of The IBT, et al., (Lake Line Express, Inc.) **DS-1374-80**
(objections that: c/d language vague, Settlement Stipulation admissions inadequate to protect charging party, posting period too short, no need for consent decree, failure to receive notice to members, failure to include other E in notice, no requirement to mail notices to stewards of Es involved, denial of hearing at which objections could be litigated overruled where admissions sufficient to secure ct judgment enforcing Bd's order, 60 day posting period adequate, second notice mailed to members, E not included in order not named in C, posting sufficient, no hearing provided at this point in procedure)

Building and Construction Trades Council of Philadelphia and Vicinity, et al. **DS-1320-80 (02/08/80)**
(where Bd approved Settlement Stipulation, no merit was found in individual Ee's argument that provision in Notice concerning status of local's contract will give other Ees impression that Bd approved U contract)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company) **DS-1309-80 (01/24/80)**
(stipulation fully remedies allegation of complaint where it provides for entry of formal Bd order and consent court judgment)

2860-8420-6700 Reinstitute operation

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(where ALJ approved settlement agreement which did not require E who had violatively transferred work to another plant to resume operations, Bd reversed ALJ's approval in light of fact that no evidence that such resumption would endanger E's economic viability)

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

2860-8420-8200 Continuing misconduct

Atlantic, Cape May, etc., Building Trades Council, et al. (Altemose Construction Company) **DS-1413-80**
(objection that settlement stipulation legitimizes respondent Us picketing after 10-day hiatus held w/o merit; Us have right to conduct lawful area standards picketing and purpose of hiatus was to provide clear break between respondents' prior unlawful picketing and commencement of any new and lawful picketing that might occur; see also DS-1414 and DS-1415)

Produce, Refrigerated & Processed Foods and Industrial Workers, Local No. 630, Teamsters (Delco Produce, Inc.) **DS-1411-80**
(absence of limitation on number of U's representatives entering E's premises does not preclude approval of settlement stipulation which provides for Bd

order prohibiting unlawful secondary picketing and entry of ct judgment enforcing Bd order subjecting U to contempt proceeding for any unlawful secondary conduct violative of ct's judgment)

2860-8440 Backpay provisions

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**

(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

Ramona A. Drobena, et al. v. N.L.R.B. **612 F.2d 1095 (C.A. 8)**

(where parties stipulated that U had violated 8(b)(1)(A), ct found no abuse of agency discretion when Bd, in accordance with its long-standing policy, entered consent cease-and-desist order against U but did not require U to pay backpay to individual Ees who lost work on account of U's unlawful practices)

2860-8445 Litigation expenses

West Coast Industrial Relations Association, Inc., N.C. **DS-1434-80**

(objections that settlement stipulation (1) did not name individual Ees subject to c/d order, (2) did not require Notice to be posted at E's clients' facilities but permitted posting at 1 client's facility, (3) included nonadmission clause and (4) did not require U pay legal costs and fees incurred by Bd and E, held w/o merit, since settlement applied to *all* Ees of E, E's clients not subject to c/d order, nonadmission clause, alone, no basis for disapproving settlement; since case not litigated but settled, Settlement Stipulation adequately remedies alleged ULPs w/o assessing costs and fees to U)

2860-8450 Other charges pending

Building and Construction Trades Council of Philadelphia and Vicinity, et al. **DS-1320-80 (02/08/80)**

(contention that settlement of allegations inappropriate because of close relation between violation covered in settlement and alleged violation in another case before Bd involving Ee rejected)

2860-8460 Nonadmissions clause

Laborers' International Union of North America, Local Union No. 1184, AFL-CIO **DS-1388-80**

(inclusion of *nonadmission* clause was not valid basis for objection and rejecting settlement stipulation where settlement effectuated policies of Act)

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO **DS-1367-80 (06/01/80)**

(charging party's objection to broad nonadmission clause because clause might preclude contempt citation in ct of appeal or jeopardize possibility of Section 303 suit, rejected, since contempt not precluded if warranted and Federal Rules of Evidence precludes use of settlement stipulation to establish Respondent's liability; further, substantial remedy provided outweighed possible detriment that language might prevent introduction of Settlement Stipulation for purposes permissible under Federal Rules)

Plumbers Local Union No. 420 (Refinery and Industrial Maintenance, Inc. **DS-1365-80 (07/08/80)**

(notwithstanding non admission clause might prevent charging party from introducing Settlement Stipulation into evidence for purposes permissible under Rule 408 of FRE, substantial remedy provided far outweighs harm to Charging Party)

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 **DS-1364-80**

(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd's administrative action; and (3) limitations in clause upon charging party's rightto use stipulation would deprive it of due process of law; see also DS-1366-80)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company) **DS-1309-80 (01/24/80)**

(inclusion in settlement of nonadmissions clause not valid basis for objection)

2860-8470 No findings of facts and/or conclusions of law

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**

(Settlement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

2860-8480 Court decision

Atlantic, Cape May, etc., Building Trades Council, et al. (Altemose Construction Company) **DS-1413-80**

(objection that settlement stipulation did not provide for immediate ct enforcement and the underlying violations are excluded from consideration in contempt proceedings of priviously enforced Bd orders held w/o merit; insistence upon inclusion of provisions for entry of ct judgments unwarranted because none of the three respondents have prior history of 8(b)(4)(B) conduct; as to allegations of 8(b)(1)(A) conduct, while there is history of such conduct by two locals, sufficiently borad judgments have been obtained against them in other proceedings; see also DS-1414 and DS-1415)

2860-8485 Prejudice to rights in court litigation

Memphis Building & Construction Trades Council, AFL-CIO **DS-1432-80**

(Bd approved Stipulation notwithstanding charging party's objection that provision in Stipulation that *...neither this Stipulation nor its contents shall be used or referred to in any other legal proceeding or action* could prejudice its rights in current litigation against Respondent in Federal Ct; Bd was satisfied that Stipulation remedies fully allegations of complaint providing as it does for entry of Bd order and Ct judgment)

2860-8490 Waiver of rights

Plumbers Local Union No. 420 (Refinery and Industrial Maintenance, Inc. **DS-1365-80 (07/08/80)**

(notwithstanding non admission clause might prevent charging party from introducing Settlement Stipulation into evidence for purposes permissible under Rule 408 of FRE, substantial remedy provided far outweighs harm to Charging Party)

2880 SETTING ASIDE OF SETTLEMENT AGREEMENT

2880-6700 **Basis for setting aside**

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**

(Bd rejected proposed settlement between E, U, and Ee since it did not include, *inter alia*, an offer of reinstatement to discriminatee)

2880-6725 Side notices

Deister Concentrator Company, Inc. **253 NLRB No. 040**

(where E posted side notice along with settlement agreement, agreement not set aside where E also took significant remedial actions in compliance with agreement)

2880-6750 Postsettlement conduct breaching agreement necessary

Deister Concentrator Company, Inc. **253 NLRB No. 040**

(reinstatement of settlement agreement which was set aside by GC after E allegedly refused to bargain and committed other ULPs, proper where ALJ found E had engaged in hard bargaining and subsequent violations differed greatly from those which occurred prior to settlement agreement and E was in substantial complaince with settlement agreement)

Retail Store Employees Union Local 214, Affiliated With United Food & Commercial Workers International Union, AFL-CIO & CLC (Pick-N-Save Warehouse Foods, Inc.) **252 NLRB No. 086**

(picketing to force E to recognize U, unlawful, where picketing commenced on two occasions w/i 12 months after valid 9(c) election; settlement agreement reached after first period of picketing set aside and Bd may reach earlier picketing which was subject matter of settlement agreement)

Furr's Cafeterias, Inc. **251 NLRB No. 125**

(setting aside settlement agreement appropriate where E engaged in post-settlement violations of the Act)

Magic Mountain Corporation **JD-337-80**

(RD properly set aside settlement agreement which called for reinstatement of ski patrol member to former or substantially equivalent position where Ee was reinstated to job handling sewage disposal)

United States Postal Service **JD-(SF)-273-79**

(settlement reinstated where complaint alleged conduct that occured before and after settlement agreement, and though all allegations fully litigated, finding of no violations relatinng to post settlement allegations established that E had fully complied with settlement agreement)

2880-6787 Failure to restore *status quo*

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**

(where Bd finds discriminatory conduct, restoration of *status quo ante* is proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

2880-7500 Effect on stipulation contained in agreement

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**

(ct held that E which had breached settlement agreement could not complain about stipulation of Bd's jurisdiction over E not being set aside when settlement agreement was dissolved; stipulation was freely entered into, never withdrawn, and still part of record in underlying ULP case; moreover E's accountant's testimony on E's gross receipts supported finding of jurisdiction)

3200 COMPLAINT

3212 GENERAL COUNSEL AUTHORITY OVER COMPLAINT

3212-1700 Final authority under Section 3(d) for issuance

The Motor Convoy, Inc. **252 NLRB No. 175**

(where first charge filed dismissed, GC issuance of second complaint on same issue based on newly discovered evidence proper absent abuse of discretion; contentions of *res judicata* rejected)

Ace Beverage Co. **250 NLRB No. 066**

(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

3212-1750 Refusal to issue within administrative discretion

Chef's Pantry, Inc. **247 NLRB No. 018**

(matter alleged in charge but not alleged in complaint not considered as ULP issue since GC exercised his statutory authority to decline to issue complaint on matter which was clearly before him, and maintained that posture during hearing; however, conduct in question served as basis for objection to election which was sustained)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**

(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

3212-2000 Consideration of untimely filed appeal is within discretion of General Counsel upon good cause shown Rule 102.19(a)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**

(Bd's issuance of complaint based on Ee's charge, not abuse of discretion notwithstanding that previously RD had decided not to issue the complaint and Ee's appeal of RD's decision was untimely by two days; Ee's lawyer gave GC lawyer gave GC sufficient reasons for his unability to comply, with normal time for filing appeal)

3212-3300 Refusal to issue not reviewable by Board or courts

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **252 NLRB No. 156**

(U not permitted to present evidence in proceeding alleging violation of Section 8(b)(7)(c) regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which E had longstanding relationship, thus rendering picketing for continued rather than for initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case; final statutory authority to decide whether U should obtain hearing on its charges rests with GC; *Bd will not act as forum that GC, for reasons satisfactory to himself has thought it proper to dismiss*)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(ct affirmed district ct's dismissal of action by E association for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file requested complaint and to require him to file complaint; GC's refusal to issue complaint is ordinarily not reviewable by federal cts unless failure to act turns on mistake of law, and GC's opinion in instant case that state agency is not statutory E, and therefore proscriptions of Sec. 8(e) do not apply was not in excess of his statutorily delegated authority)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4**

(in dismissing action for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file complaint and to require him to do so, ct held that, unless ct can ascertain that GC acted in excess of his statutorily delegated authority, ct has no jurisdiction to require him to issue complaint, and case dismissed for want of jurisdiction, since Act is not so clear that ct can say with reasonable certainty that GC exceeded his delegated authority in ruling that state agency was not statutory E)

3212-6700 Theory of case determined by General Counsel

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

3212-9100 Right to litigate allegations in face of settlement agreement

L.B. Priester & Son, Inc. **252 NLRB No. 034**

(where E had signed informal settlement agreement to pay 3 Ees backpay claims and later U filed charge against E alleging 8(a)(5) violations and conduct was found to constitute non compliance with settlement agreement, settlement agreement set aside, litigation of those violations covered by vacated settlement agreement proper, ALJ's finding of violation and remedy for all violations proper)

3225 FORM AND CONTENT OF COMPLAINT

3225-3300 Particularity not required

Pyromactics, Inc. **251 NLRB No. 141**

(E's mtn to dismiss complaint on ground that Ee's discharge was not specifically alleged as violation, denied; charge contained general 8(a)(1) allegation, and such charge is sufficient to support complaint alleging discharge of Ees in violation of Sec.8(a)(1); pleading of all the evidence in the charge is not required)

3225-5000 Sufficient to inform respondent of nature of allegations

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(inclusion in make-whole order of all nonmember applicants for job referral as well as individual charging parties, proper where amended charge and consolidated complaint alleged that Ees who were not members of U and applicants for employment who were not members suffered discrimination, so that U was put on notice as to who were alleged to be discriminatees, further, nature of evidence adduced at hearing put U on notice of allegation that its referral system inherently favored members over nonmembers)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(finding of violation proper, notwithstanding allegations of complaint that Respondents' threatened to picket jobsite inadequate to state violation since it might be presumed that Respondents' would engage in lawful picketing and were giving secondary E opportunity to restrict picketing by establishing gate for non-U contractor, as allegation of complaint sufficient to put Respondents' on notice that statements were in issue and threat was fully litigated)

3225-9000 Defective complaints

Flair Molded Plastics, Inc. **250 NLRB No. 017**

(typographical error in C allegation which did not obscure sense or meaning of C does not prejudice Respondent and C valid)

3237 RELATIONSHIP TO CHARGE

3237-3300 Legally sufficient relationship between subject matter of charge and complaint only requirement

Levingston Shipbuilding Company **249 NLRB No. 001**

(mtn to strike allegation of unlawful interrogation, denied; evidence of interrogation was uncovered during Bd's investigation of charge that E discharged Ee for U organizing activity, and interrogation was closely related to charge where it was part of E's conduct during dischargee's organizing activity; moreover E responded to C and did not object to testimony on the subject)

3250 VARIANCE BETWEEN COMPLAINT AND CHARGE, PROOF, OR FINDINGS

Charmer Industries, Inc. **250 NLRB No. 031**

(where charge and C alleged that Es unilaterally changed procedures for collecting c.o.d. payments by having salesmen replace delivery drivers, represented in another unit, in making collections, ALJ rejected Es' contention

3250—Cont.

that C was barred under Sec. 10(b) on ground that change itself came about through bargaining regarding duties of drivers and that, since neither charge nor C alleged unlawful failure to bargain about effects of change upon working conditions of salesmen, there was a variance between allegations and proof which required dismissal of proceeding)

Chef's Pantry, Inc. **247 NLRB No. 018**
withdrawal of objection to election did not preclude consideration of refusal to bargain allegation, or any conduct alleged in remaining objections which relates to it; pleadings fully apprised E of matters to be litigated and GC opened no *new areas* at hearing which were not covered by amended consolidated complaint, extant charges upon which it was based, and objections to be heard)

3250-3300 Complaint may allege ULP's not set forth in charge

Southwest Research Institute **D(SF)-276-79**
(E's contention that issue of Ee questionaire was beyond jurisdiction of this tribunal rejected, since, notwithstanding absence of allegations in the charge concerning questionaire, such allegations were included in complaint, E's answer addressed itself to the issue, and E did not object to receipt of evidence regarding questionaire, but cross-examined GC's witnesses and called witnesses of its own, fully litigating issue)

3250-3333 If of similar nature

Eastern Maine Medical Center **253 NLRB No. 024**
(allegation that E solicited Ees to decertify U held not barred by 10(b), even though it was contained in amended charge filed more than 6 months after the events, since original charge was broad enough to encompass allegation, specifically in its *catch-all language* that *by the above and other acts* E violated Act inasmuch as allegation was sufficiently related to first charge to become part of complaint)

Eastern Maine Medical Center **253 NLRB No. 024**
(even though matter of impasse was not specifically alleged in complaint, it was fully litigated and fell w/i general scope of refusal to bargain allegations of complaint)

Red Food Store **252 NLRB No. 023**
(dismissal of allegations in complaint appropriate since there was fatal variance between charge and complaint where allegations relating to certain Ees were not part of controversy to which charge was addressed)

American Pistachio Corporation **249 NLRB No. 174**
(no finding of violation where GC did not allege conduct in C, did not add it by amendment at trial, and did not make any allegation in C broad enough to encompass it; and respondent was not put on notice that conduct was in issue)

Charge Card Association **247 NLRB No. 119**
(mtn to amend complaint denied where in prior related case that particular charge was withdrawn and moreover in instant case there is no conduct to support similar charge)

3262 AMENDMENTS TO COMPLAINT

B. E. & K., Inc. **252 NLRB No. 036**
(GC's mtn to amend complaint, contained in his brief, to specifically allege interrogation of Ee during specified time period, denied, in view of manner of litigation of interrogation issue and, since matter has been fully litigated, it warrants a finding; and if it were necessary that matter be formally alleged, an order to show cause would be required; moreover, *briefs* should not be used as means of making *motions*)

Chester Valley, Inc. **251 NLRB No. 190**
(mtn for leave to amend C to allege additional ULPs, granted, notwithstanding E's contention that mtn should be denied because GC failed to present any evidence supporting amended allegation and because amendment at conclusion of all testimony was improper; E's brief neither claims that E would have offered additional evidence at hearing if C had included proposed amendment nor claims existence of any evidence, not already in record, which supports E's position on merits of proposed amendment; moreover, E's brief deals with proposed amendment on its merits)

3262-3300 Time of amendment

3262-3325 Before hearing

Centre Engineering, Inc. **253 NLRB No. 028**
(violation found though not alleged in complaint as complaint was amended prior to hearing, facts fully litigated at hearing and sufficiently related to subject matter of complaint)

3262-3350 During hearing

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(amendment of complaint at hearing to allege maintenance of unlawful no-solicitation rule proper since amendment closely related to allegation in original complaint of maintenance of unlawful no-solicitation rule and issue was fully litigated)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(mtn to amend complaint denied where E was not fully appraised of facts, trial was at end of second day when mtn was first made and subject would be merely cumulative)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(evidence adduced at hearing as to execution of contract between E and minority U and received before complaint was amended to show preferential treatment to U, admissable to show E animus to petitioner and as bearing on credibility of witness, E's president)

Classic Truck Rental Corp. **251 NLRB No. 056**
(E's contention that by permitting GC to amend complaint allegation of discrimination after GC rested, E's representative was denied opportunity to confront and cross-examine alleged discriminatee on issue, rejected, where GC had intended to move to amend before resting and rested only to indicate that he would not call additional witnesses; and after motion to amend was granted, E was given opportunity to reopen his case and call alleged discriminatee but declined to do so)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(amendment of C to allege additional violation proper where sufficiently related to allegations in original C notwithstanding would otherwise be outside 10(b) period)

3262-3362 After hearing

Douglas & Lomason Company **253 NLRB No. 039**
(ALJ denied GC's mtn to amend complaint to allege new violation where E had no notice of such violation, did not litigate it, and GC offered no excuse for failure to amend at an earlier date)

Chester Valley, Inc. **251 NLRB No. 190**
(GC's mtn for leave to amend complaint so as to allege that E violated 8(a)(5) by offering to deal directly with Ees, denied, where 8(a)(5) allegations of complaint were dismissed because demand for bargaining limited to E's two-plant facility substantially deviated from appropriate three-facility unit)

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(GC's request in his brief to Bd for additional 8(a)(1) finding denied where issue not litigated at hearing and Respondent had no notice that legality of its conduct was in question, and thus did not defend against it; mtn to conform pleadings to proof is insufficient to add to C new allegation of specific unlawful conduct)

The Nestle Company **248 NLRB No. 106**
(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Ee, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

L. R. **Bob** ***Spillers Painting Co.*** **JD-(SF)-169-80**
(when GC amends C after hearing and only bare *prima facie* case has been presented during hearing this is not enough to support violation as issue has not been fully litigated because Respondent had no opportunity to present defense)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(Bd properly allowed to amend C after hearing to allege violation based on E's use of application forms which contained questions as to Ee's U activities where substantial amount of testimony concerning use of these forms presented at hearing)

3262-6700 Adequacy of notice to respondent

Sheet Metal Workers International Association, Local Union No. 20, AFL-CIO (The Employers Association of Sheet Metal Workers, etc.) **253 NLRB No. 018**
(where complaint was narrowly drawn and raised only one issue, GC's rainsing of another issue for first time in exceptions to ALJ's decision w/o previously attempting to raise or litigate it held not to sufficiently put respondent on notice of issue as one to be litigated)

3262-6750 Continuance to prepare to meet new allegations

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(contrary to E's contention, ALJ did not err in allowing amendment to complaint where E had opportunity to prepare its defense and issue was fully litigated)

3275 AMENDMENT TO CONFORM PLEADINGS TO PROOF

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(GC's request in his brief to Bd for additional 8(a)(1) finding denied where issue not litigated at hearing and Respondent had no notice that legality of its conduct was in question, and thus did not defend against it; mtn to conform pleadings to proof is insufficient to add to C new allegation of specific unlawful conduct)

3282 AMENDMENT TO INCLUDE ULP'S FULLY LITIGATED

3282—Cont.

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**

(amendment of complaint at hearing to allege maintenance of unlawful no-solicitation rule proper since amendment closely related to allegation in original complaint of maintenance of unlawful no-solicitation rule and issue was fully litigated)

The Nestle Company **248 NLRB No. 106**

(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Ee, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

(mtn by charging party, not joined by GC, to amend complaint to allege violation of 8(a)(3) by January and March layoffs, denied, since neither month's layoffs was fully litigated as 8(a)(3) violation where only failure to bargain over March layoff decision had been alleged)

Vitco Steel Supply Corp. **JD-103-80**

(GC's request that E be found to have conditioned future bargaining on U's withdrawal of ULP charges denied as not fully litigated, notwithstanding E's having introduced testimony to contrary, where U failed to amend complaint to include allegation after ALJ's comments had put GC on notice that E might have violated Act in this way)

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**

(contrary to E's contention, ALJ did not err in allowing amendment to complaint where E had opportunity to prepare its defense and issue was fully litigated)

3298 DISMISSAL OF COMPLAINT

Memphis Furniture Manufacturing Co. **252 NLRB No. 025**

(ALJ's finding that E acted unlawfully by unilaterally modifying contract found tantamount to ruling on E'smotion to dismiss complaint notwithstanding ALJ did not specifically rule on said motion)

B. N. Beard Company **248 NLRB No. 016**

(although it would have been better if ALJ had issued decision setting forth his reasons for dismissal of complaint, Bd held failure to do so was nonprejudial error and remand in compliance with R/R Sec. 102.45 unnecessary, where ALJ set forth on the record his reasons for dismissing complaint, GC had fully argued merits of dismissal, and no party has requested remand for purpose of issuance of decision)

Actors' Equity Association **247 NLRB No. 172**

(allegations in amendment to complaint concerning invalidity of U security provisions dismissed, where RD's prior determination of mootness had not been abandoned for any substantive reason, there was no more apparent reason for remedial order now than when original complaint issued, and there is no other apparent purpose to be served by deciding merits of issue)

3600 NOTICE OF HEARING

Lighthouse For The Blind of Houston **248 NLRB No. 178**

(lack of notice in formal C held nonpreducial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

Lighthouse For The Blind of Houston **248 NLRB No. 178**

(lack of formal notice of hearing at initial issuance of C, while not preferable, does not, w/o more, constitute denial of due process or subversion of rulemaking process)

4000 ANSWER TO COMPLAINT

4017 TIME FOR FILING

4017-3300 Time allowed

Sherwood Coal Company **252 NLRB No. 074**

(E's failure to file answer due to its attorney's delinquency in reviewing complaint not *good cause* for failure to file)

4017-6700 Effect of late filing

Exxon Company, U.S.A. **253 NLRB No. 027**

(mtn to strike answer to amended complaint, late by 9 days, denied where U brief contends GC made representations which lulled it into filing late answer and also U had filed timely answer to original complaint)

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**

(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive jurisdiction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

Hillcrest Packing Co., Inc. **247 NLRB No. 187**

(Respondent's reason for its untimely filing of answer to complaint does not meet *good cause* standard where asserted reason is failure of its attorney to file but Respondent itself had notice that no answer had been filed and had itself promised to file answer)

Mahler Sales Co., Inc. **JD-(SF)-312-79**

(in rejecting GC's contention that statute of limitations began running when U became aware of unilateral change at time E gave U Ee handbook, ALJ dismissed complaint because it was not timely filed where initial change occurred to U knowledge more than six months prior to filing)

4033 EFFECT OF FAILURE TO FILE

American Steel Line Co. **253 NLRB No. 046**

(allegations of complaint were deemed admitted and found to be true where (1) respondent failed to answer, or show good cause for not doing so, after RD informed it that its letter accusing U of illegal activities did not comply with Bd's rules regarding valid answers, stated that respondent should inform RD if it wished its letter to constitute an answer, and extended time for answering and (2) even if deemed an answer, letter did not meet Bd requirement that an answer specifically admit, deny or explain each allegation of complaint)

Urban Laboratories, Inc. **249 NLRB No. 116**

(where E was acting *pro se* and failed to ans C, allegations deemed admitted; moreover, fact that E is not attorney does not constitute good cause for failure to file timely ans)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**

(mtn for summary judgment granted where one of 2 respondents had filed ans to original C but neither respondent had filed ans to amended C)

Kirila Contractors, Inc. and Joseph J. Defiore, d/b/a Joseph J. Defoire, Builders **247 NLRB No. 063**

(motion for summary judgment granted where respondent failed to request extension of time to file answer and then ignored Region's offered extension of time)

4067 SUFFICIENCY OF FORM AND CONTENT

American Steel Line Co. **249 NLRB No. 053**

(where Respondent answered C with letter, Regional Office asked Respondent if letter constituted ans and Respondent never replied; letter held improper anw as it does not specifically admit, deny or explain each of facts alleged in C)

4067-2500 Particularity required

American Steel Line Co. **253 NLRB No. 046**

(allegations of complaint were deemed admitted and found to be true where (1) respondent failed to answer, or show good cause for not doing so, after RD informed it that its letter accusing U of illegal activities did not comply with Bd's rules regarding valid answers, stated that respondent should inform RD if it wished its letter to constitute an answer, and extended time for answering and (2) even if deemed an answer, letter did not meet Bd requirement that an answer specifically admit, deny or explain each allegation of complaint)

Varco Phono Parts Corp. **250 NLRB No. 153**

(E's letters purporting to be answers to C held inadequate and not in compliance with Bd's R/R Sec. 102.20, since they did not specifically admit, deny, or explain C allegations; even assuming letters constituted proper answer, they admitted facts which established a violation and raised only matters which may more appropriately be raised at compliance proceeding)

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**

(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4067-5000 Sufficiency of statement of defense

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**

(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4067-7500 Adequacy of general denial

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**

(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4075 STRIKING OF FALSE, FRIVOLOUS OR SHAM ANSWER

4075—Cont.

M.H.T. Corporation, d/b/a Dollar Rent-A-Car **250 NLRB No. 168**
(jurisdictional facts admitted in prior R case and fact of receipt of request to bargain admitted in instant C case)

4079 STRIKING OF UNRESPONSIVE AND IMMATERIAL PORTIONS OF ANSWER

Hoosier Energy Division of Indiana Statewide Rural Electric Cooperative, Inc. **247 NLRB No. 011**
(GC's motion to strike portions of answer and amended answer denied, notwithstanding defenses raised therein do not raise meritorious defense to allegations of complaint, since defenses could be viewed as endeavor of Respondent to preserve position)

4091 ADMISSION BY ANSWER

SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions **252 NLRB No. 017**
(mtn for summary judgment granted, notwithstanding E's denial of complaint allegation that it had refused to bargain on specified date, where E's answer admitted complaint allegation that U had requested it to bargain, and various exhibits attacked to mtn for summary judgment conclusively established that E had refused to bargain on specified date)

4400 CONSOLIDATION AND SEVERANCE OF PROCEEDING

4401 GENERALLY

4401-5000 **Authority of Regional Director**

Classic Truck Rental Corp. **251 NLRB No. 056**
(where at time RD's order consolidating cases had issued, ALJ had ordered consolidation of cases with earlier cases and had reopened hearing, ALJ held that, since hearing had been reopened, any question concerning further consolidation would more appropriately be handled through motion to him rather than through RD)

4425 PROCEEDINGS CONSOLIDATED

4425-6700 **Consolidation of CA and election objections proceedings proper**

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(where R case consolidated with C cases for limited purpose of taking evidence on challenged ballots, RD ordered to open ballots of Ees held eligible and issue certification if U received majority, where U never filed objections to election, notwithstanding E held to have committed ULPs)

4450 CONSOLIDATION CRITERIA

4450-3300 **Appropriate where**

4450-3350 Same respondent

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(mtn to consolidate denied where cases involve different units of Ees and different factual backgrounds which are best treated separately notwithstanding same E)

4450-6700 **Inappropriate where**

4450-6717 Different issues

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(mtn to consolidate denied where cases involve different units of Ees and different factual backgrounds which are best treated separately notwithstanding same E)

4450-6725 Decision in one case already issued

Sullivan Transfer Co. **247 NLRB No. 117**
(consolidation not appropriate where Sec. 8(b)(4)(D) conduct did not occur before E engaged in alleged Sec. 8(a)(3) conduct, additionally two separate proceedings were already held and 10(k) proceeding was already pending before Bd when ALJ's decision issued)

4450-6775 Proceedings tried separately

Sullivan Transfer Co. **247 NLRB No. 117**
(consolidation not appropriate where Sec. 8(b)(4)(D) conduct did not occur before E engaged in alleged Sec. 8(a)(3) conduct, additionally two separate proceedings were already held and 10(k) proceeding was already pending before Bd when ALJ's decision issued)

4475 SEVERANCE OF PROCEEDINGS

4475-3300 **Appropriate where**

Hedison Manufacturing Company **249 NLRB No. 096**
(Bd severed and remanded discharge cases to ALJ for supplemental decision, where ALJ erred in precluding E's witnesses, whose testimony was relevant to events surrounding discharges, from testifying because E's official had refusal to comply with subpoena and to testify)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(where ALJ erred in dismissing 8(a)(5) allegation that E unlawfully changed job classifications and rates of pay after election herein but before outcome of election had been determined and record shows that changes did occur but fails to show compelling economic considerations, Bd ordered C alleging unlawful changes be severed from proceedings and final disposition be postponed until outcome of election is resolved)

4800 INTERVENTION

4801 GENERALLY

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(where U did not learn of Motion for Summary Judgment or Notice to Show Cause until 1 day after deadline for receipt of responses, and inasmuch as only minor 1-day delay was involved, Bd accepted U's documents and treated its mtn to entervene on the merits)

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(U's mtn to intervene in summary judgment proceeding against respondent U on ground U was authorized representative of Ees involved by reason of Joint Council's decision, denied; Joint Council decision is not binding on Bd, U does not claim to represent Ee majority in unit, granting mtn would undermine Bd's authority to determine scope of unit and would fragment unit, E never approved or was party to Joint Council proceeding, and respondent U's assertion of jurisdiction over Ees herein was not claimed to be unlawful)

5200 DISCOVERY

5250 NOT PROVIDED FOR BY ACT

Maywood, Inc. **251 NLRB No. 139**
(Bd's failure to provide for dsicovery not a violation of due process of law, since discovery is not constitutional right in administrative proceedings)

5600 DEPOSITIONS

6000 SUBPOENAS

6060 REVOCATION

6060-6700 **Grounds for revocation**

6060-6725 Rule 102.118

Central Freight Lines, Inc. **250 NLRB No. 063**
(*subpenas duces tecum* served on RD and field examiner *revoked* on mtn of GC, since GC had not given his written consent to RD and field examiner to produce documents described in subpenas, or to appear at trial and testify; documents sought had no probative value; *Section 102.118 of Bd's R/R* precluded production of documents described in *subpenas duces tecum*)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(R/R 102.118 cannot alone be basis for revocation of properly issued subpoena in absence of some valid evidentiary objection or priviledge; here Bd found evidentiary priviledge which protected informal investigatory and trial preparatory process of administrative agencies)

6060-6735 Immaterial to case

Behring International, Inc. **252 NLRB No. 055**
(ALJ properly revoked subpoena of Bd agent whose testimony E wanted to adduce concerning her investigation of initial charge as well as certain affidavits on ground that testimony and documents would have contained admissions from various witnesses, obtained when Bd agent solicited withdrawal of original charge; testimony sought fell w/i limited evidentiary privilege which protects investigatorial and trial-preparatory processes of regulatory agencies such as Bd; moreover, evidence sought is irrelevant to any issue herein)

Central Freight Lines, Inc. **250 NLRB No. 063**
(*subpenas duces tecum* served on RD and field examiner *revoked* on mtn of GC, since GC had not given his written consent to RD and field examiner to produce documents described in subpenas, or to appear at trial and testify; documents sought had no probative value; *Section 102.118 of Bd's R/R* precluded production of documents described in *subpenas duces tecum*)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Bd properly upheld quashing subpoenas directed to field examiner with respect to his alleged statement that ULP charges would probably be dismissed, where others were present during conversations with field examiner and Es showed no reason why examining these people was not possible or would not have produced information similar to that which they sought from field examiner; moreover, there was doubt whether information sought was sufficiently material to Es' case to outweigh investigatory privilege)

6060-6750 Claim of privilege

Behring International, Inc. **252 NLRB No. 055**
(ALJ properly revoked subpoena of Bd agent whose testimony E wanted to adduce concerning her investigation of initial charge as well as certain

affidavits on ground that testimony and documents would have contained admissions from various witnesses, obtained when Bd agent solicited withdrawal of original charge; testimony sought fell w/i limited evidentiary privilege which protects investigatorial and trial-preparatory processes of regulatory agencies such as Bd; moreover, evidence sought is irrelevant to any issue herein)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(R/R 102.118 cannot alone be basis for revocation of properly issued subpoena in absence of some valid evidentiary objection or priviledge; here Bd found evidentiary priviledge which protected informal investigatory and trial preparatory process of administrative agencies)

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**
(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

6400 STIPULATION AND TRANSFER TO BOARD

6800 SUMMARY JUDGMENT

6801 GENERALLY

Charmer Industries, Inc. **250 NLRB No. 031**
(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

Lighthouse For The Blind of Houston **248 NLRB No. 178**
(lack of notice in formal C held nonpreducial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

6801-5000 Board authority to use summary procedure

Jefferson Electric Co., Inc. **251 NLRB No. 129**
(E's subsequent recognition of U, occuring after its initial, unlawful refusal to bargain, insufficient to withstand *Motion for Summary Judgment*, since Ees' statutory rights had been violated)

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**
(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive jurisdiction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(E's contention that Bd erred in granting summary judgment in favor of GC, on ground mtn for summary judgment upon which Bd based its decision involved disputed issues of fact, rejected, where there was no dispute regarding substance of U's ULP charges, allegations in complaint, or terms of parties' settlement agreement; E's disagreement with Bd's conclusions from undisputed facts does not support a challenge to Bd's use of its summary judgment power)

6833 NOTICE TO SHOW CAUSE PROCEDURE

Varco Phono Parts Corp. **250 NLRB No. 153**
(E's response to show cause held not to constitute good cause for failure to file proper answer w/i meaning of Bd's R/R Sec. 102.20, where response did not deny commission of any ULPs and, therefore, allegations of C stood uncontroverted, and response did not explain why E failed to contact RD concerning an answer or extension of time for filing an answer)

Sierra Vista Hospital, Inc. **249 NLRB No. 067**
(where Bd had denied E's mtn to revoke certification in companion case in which E failed to produce any evidence pertaining to conflict of interest as result of supervisory participation in positions of authority in nurses' association, and GC's mtn for summary judgment was still pending in instant case, Bd ordered that cause be shown why Bd should not now issue second supplemental D/O granting GC's mtn for summary judgment)

6867 CIRCUMSTANCES OF USE

SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions **252 NLRB No. 017**
(mtn for summary judgment granted, notwithstanding E's denial of complaint allegation that it had refused to bargain on specified date, where E's answer admitted complaint allegation that U had requested it to bargain, and various exhibits attacked to mtn for summary judgment conclusively established that E had refused to bargain on specified date)

SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions **252 NLRB No. 017**
(mtn for summary judgment granted, notwithstanding E assertedly refused to bargain on ground that it had been informed by written ptn that U did not have Ee majority, where alleged ptn was submitted w/i decertification year w/i which certified U's majority is irrebutably presumed)

6867-0100 Generally

N.L.R.B. v. Electra-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**
(summary judgment proper disposition where Respondent did not contest factual issue of whether final offer had been accepted but rather advanced affirmative defense that U's constitution precluded accepted offer from constituting final agreement)

6867-3300 In absence of answer

IPC, Inc. **252 NLRB No. 080**
(allegations of backpay specification deemed admitted to be true)

Collier's Superfood, Inc. d/b/a Willow Street IGA **252 NLRB No. 011**
(Respondent withdrew answers to complaints and failed to respond to Notice To Show Cause)

American Ham Company, Inc. **251 NLRB No. 194**
(where E failed to answer backpay specification and had not offered any explanation for failure to do so, allegations of specification deemed to be true and so found by Bd w/o taking of evidence in support of allegations)

D. V. Copying and Printing, Inc. **250 NLRB No. 005**
(summary judgment granted where respondent failed to submit timely ans notwithstanding on last date to file ans respondent requested extension because respondent failed to show proper cause; moreover, fact that respondent now alleges that its counsel and his secretary were both ill at time ans due not determinative as it should have been alleged at that time)

Medallion Automotive Systems, Inc. **249 NLRB No. 131**
(allegations of amended complaint deemed admitted and found to be true where after E's attorney advised counsel for GC that E was no longer functioning and that bankruptcy proceedings were being planned, E failed to file answer to amended complaint despite warnings by counsel for GC of consequences, and E further failed to file response to notice to show cause)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(mtn for summary judgment granted where one of 2 respondents had filed ans to original C but neither respondent had filed ans to amended C)

Fieldston Ambulance & Medical Systems, Ltd.; et al. **248 NLRB No. 170**
(GC's mtn for summary judgment granted where Es failed to file ans to backpay specification and made no response to Bd's notice to show cause)

6867-3325 Where answer untimely filed

Livingston Powdered Metal, Inc. **253 NLRB No. 073**
(Summary Judgment granted where E, after receiving extensions, mailed answer to complaint on date that answer was to be filed with RD who did not receive answer until after GC's mtn for summary judgment had been mailed to Bd; Section 102.114(b) of R/R states that filing date means that document must be received by Bd on that date)

APD Transport Corp. and Its Alter Ego, *National Book Consolidators, Inc.* **253 NLRB No. 056**
(mtn for summary judgment granted where E failed to show good cause for failure to file timely answer; and request to withdraw charges and dismiss complaint because of settlement agreement denied since settlement agreement did not provide substantial remedy, some Ees objected to settlement terms of private settlement agreement, and settlement agreement would not effectuate policies of Act)

American Steel Line Co. **253 NLRB No. 046**
(allegations of complaint were deemed admitted and found to be true where (1) respondent failed to answer, or show good cause for not doing so, after RD informed it that its letter accusing U of illegal activities did not comply with Bd's rules regarding valid answers, stated that respondent should inform RD if it wished its letter to constitute an answer, and extended time for answering and (2) even if deemed an answer, letter did not meet Bd requirement that an answer specifically admit, deny or explain each allegation of complaint)

Cleartex Co. **252 NLRB No. 007**
(mtn for summary judgment granted, where E filed untimely answer to complaint over 2 months after deadline set for filing, E offered no explanation for its untimely answer, and it did not respond to notice to show cause; consequently, in accordance with Bd's R/R, allegations of complaint are deemed to be admitted and are found to be true)

Varco Phono Parts Corp. **250 NLRB No. 153**
(summary judgment granted where E failed to file acceptable answer w/i 10 days from service of C, or w/i extended time afforded it by RD, and no good cause for E's failure to do so was shown; consequently, allegations of C are deemed to be admitted true)

6867-6700 Where issue has or could have been previously resolved

Net Television, Inc., a Wholly Owned Subsidiary of Educational Broadcasting Corporation **252 NLRB No. 088**
(summary judgment denied where RD erroneously refused E's request to withdraw stipulation prior to representation election that Ee was supervisor which E entered into with belief that two other Ees who occupied analogous positions were also supervisors but were determined afterwards not to be supervisors by RD; stipulation did not factually address Ee's actual job duties and authority nor was Ee's status litigated in that regard)

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**
(mtn for summary judgment granted where all issues raised by E were or could have been litigated in prior R proceeding, E does not offer to adduce at hearing newly discovered or previously unavailable evidence nor allege any special circumstances which would require Bd to reexamine R-case decision)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(E's mtn for summary judgment based on E's claim that charging party had refused E's unconditional offer of reinstatement, denied since issue of whether E in fact made unconditional offer of reinstatement had not yet been resolved and case involved other issues which had been resolved contrary to E)

6867-6705 Jurisdiction

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

St. Elizabeth Community Hospital v. N.L.R.B. **625 F.2d 123 (C.A. 9, 1980)**
(First Amendment challenge to Bd's jurisdiction over charitable hospital operated by religious order held timely raised, notwithstanding contention that issue could have been litigated at R proceedings before RD and no new or previously unavailable evidence was offered or special circumstances alleged to require Bd's consideration, since it is sufficient that hospital raised First Amendment issue in R proceedings before Bd and did not defer its challenge to enforcement proceedings; case remanded to Bd for further consideration in light of SCt's opinion in *NLRB v. Catholic Bishop*, 440 U.S. 490)

6867-6712 Failure to refer Region's investigatory file

Allis Chalmers Corporation **252 NLRB No. 063**
(mtn for summary judgment granted notwithstanding E's contention that Bd's review of RD's report on objections was defective because entire investigative recard was not before it when it adopted report, and that Bd should consider entire record in underlying R proceeding suplemented by proper hearing; Bd properly exercised its discretion in adopting RD's decision inasmuch as E's exceptions raised no substantial or material issues to warrant a hearing, and instant finding is supported by Act's policy of expeditiously resolving R questions; Bd declined to follow Prestolite, 592 F.2d 306 (C.A. 6) and Cambridge Wire 622 F.2d 1195 (C.A. 4))

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

6867-6725 Unit determination

Valley View Hospital **252 NLRB No. 160**
(GC's mtn for summary judgment denied where RD had found unit including RNs appropriate in view of stipulation of parties; however, there was no testimony at R hearing which would indicate RNs were technical Ees, or performed duties different from those implied in their job classification, and stipulation alone cannot override mandate of 9(b) requiring professional Ees to vote on inclusion in unit with non-professional Ees)

Big Y Foods, Inc. **251 NLRB No. 123**
(E's contention that Bd had not fulfilled its statutory duty to make unit determination in its Decision and Direction of Elections and summary judgment fails because of new issue that could not have been previously raised held w/o merit; Bd had found that either Unit A *or* Unit B was appropriate, and therefore affirmative duty placed on Bd by Sec. 9(b) was not violated by allowing Ees to express their desires in elections)

Colorado Aggregate Company, Inc. **250 NLRB No. 169**
(concerning Ees of two separate and distinct facilities of E)

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1980)**
(remanded for reconsideration of question of whether Ees known as *Operator/Runners* were guards w/i meaning of Sec. 9(b)(3) where Bd held determined Ees were not guards on basis of R hearing only, did not consider relevant information introduced at ULP hearing on related charge and avoided addressing inconsistency between classification of Ees in present case and Ees with same title in three Bd decisions involving same E, notwithstanding Bd's argument that R/R Sec. 102.67(f) required party to produce all abvailable evidence at R hearing rather than attempt to relitigate unit issue at ULP hearing)

6867-6750 Failure to hold hearing on objections to election

Allis Chalmers Corporation **252 NLRB No. 063**
(mtn for summary judgment granted notwithstanding E's contention that Bd's review of RD's report on objections was defective because entire investigative recard was not before it when it adopted report, and that Bd should consider entire record in underlying R proceeding suplemented by proper hearing; Bd properly exercised its discretion in adopting RD's decision inasmuch as E's exceptions raised no substantial or material issues to warrant a hearing, and instant finding is supported by Act's policy of expeditiously resolving R questions; Bd declined to follow Prestolite, 592 F.2d 306 (C.A. 6) and Cambridge Wire 622 F.2d 1195 (C.A. 4))

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**
(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with no quasi about it, concerning which cts should not interfere save for the most glaring discrimination or abuse* however, if party demonstrates by prima facie evidence existence of *substantial and material factual issues which if resolved in its favor, would require setting aside election* hearing is required)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(enforcement denied where Bd improperly granted summary judgment in ULP case despite E's showings of atmosphere of fear and coercion that would tend to interfere with election and possible *Savair* violations; hearing was required on E's objections)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. Hy-Lond Enterprises, Inc., d/b/a Hy-Lond Convalescent Hospital **Dkt. No. 78-1713 (C.A. 9, March 21, 1979 (unreported))**
(failure to hold evidentiary hearing on E's objections to elections did not deny E right to due process of law)

6867-6766 Objection to conduct affecting election

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **248 NLRB No. 045**
(granting GC's mtn for summary judgment, held warranted even if GC neglected to affix to copy of mtn mailed to E U's letter requesting recognition and E's response thereto, since E had possession of the two documents)

6867-6800 Failure to litigate present allegations in prior proceeding

Maremont Corp. World Parts Division **249 NLRB No. 043**
(E's mtn for summary judgment on ground that GC's failure to litigate instant allegations known to him at time of earlier hearing, precluded GC from litigating such allegations herein, denied; although aware of such allegations, GC was not therefore compelled to litigate allegations in prior proceeding, or not at all; there was no attempt to relitigate factual matters previously litigated under different provision of Act, alleged violations in both proceedings were not roughly concurrent, and there was no settlement agreement precluding litigation of presettlement conduct known to GC at time of execution of settlement).

Maremont Corp. World Parts Division **249 NLRB No. 043**
(E's mtn for summary judgment on ground that GC's failure to litigate instant allegations known to him at time of earlier hearing, precluded GC from litigating such allegations herein, denied; instant case does not subject

6867-6800—Cont.

E to unnecessary harassment since GC attempted to litigate allegations herein in earlier proceeding but ALJ denied mtn to amend C; having sufficient notice to prepare case herein, E may not now successfully argue that it has been prejudiced; and E's argument, if accepted, would severely restrict GC's legitimate exercise of discretion in expeditious litigation of outstanding Cs)

6867-8400 Where no factual dispute

W. F. Hall Printing Company **250 NLRB No. 122**
(mtn for summary judgment granted where it is admitted that E sent Ees letter, using language substantially same as that which has recently been found unlawful, requesting them to refuse to sign U authorization cards and also to report to E if any Ee harrassed them about signing U authorization cards)

Colony Printing and Labeling, Inc. **249 NLRB No. 002**
(and there was no matter in issue that required hearing before an ALJ; statements, admittedly made by E, constituted ULPs)

6867-9500 Backpay proceeding

Seven Motors Ltd., d/b/a Mazda South; et al. **252 NLRB No. 116**

D. V. Copying and Printing, Inc. **250 NLRB No. 005**
(summary judgment granted where respondent failed to submit timely ans notwithstanding on last date to file ans respondent requested extension because respondent failed to show proper cause; moreover, fact that respondent now alleges that its counsel and his secretary were both ill at time ans due not determinative as it should have been alleged at that time)

Chemtronics, Inc. **250 NLRB No. 006**
(back pay specification deemed admitted as true and GC's mtn for summary judgment granted since ans not timely nor sufficient in form or content where 11 months from service of purported ans due in part to numerous extensions to allow E to obtain new labor counsel, and 5 months after E aware of its counsel's failure to file ans response was not ans prepared by new counsel but affidavit by E's vice-president)

6884 DISMISSAL OF COMPLAINT OR ALLEGATIONS CONTAINED THEREIN

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**
(where GC refused to consent to respondent's motion for dismissal of specified allegation, ALJ felt obliged to reserve decision thereon and subsequently made ruling disposing of issue)

Pyromactics, Inc. **251 NLRB No. 141**
(E's mtn to dismiss complaint on ground that Ee's discharge was not specifically alleged as violation, denied; charge contained general 8(a)(1) allegation, and such charge is sufficient to support complaint alleging discharge of Ees in violation of Sec 8(a)(1); pleading of all the evidence in the charge is not required)

7000 JUDGMENT ON THE PLEADINGS

V. Pangori & Sons, Inc., and David Cuvrell, Receiver in Bankruptcy **248 NLRB No. 070**
(mtn for judgment on the pleadings granted, since respondents failed to file answer to complaint)

7200 ALJ's QUALIFICATION AND AUTHORITY

7201 GENERALLY

Classic Truck Rental Corp. **251 NLRB No. 056**
(where at time RD's order consolidating cases had issued, ALJ had ordered consolidation of cases with earlier cases and had reopened hearing, ALJ held that, since hearing had been reopened, any question concerning further consolidation would more appropriately be handled through motion to him rather than through RD)

7250 QUALIFICATION REQUIREMENTS

7250-4500 Motions to disqualify

7250-4567 Timeliness

Pioneer Natural Gas Company **253 NLRB No. 003**
(Bd found no merit in E's contention that ALJ was prejudiced against E and unduly pressured it to settle case by alleged off-the-record comments where it was incumbent upon counsel for E immediately to request that any alleged comments be repeated on record, to make timely objection thereto, and to move that ALJ disqualify himself; moreover, E's claim of impropriety was not made until after ALJ had issued decision and thus not timely raised; in any event, ALJ's findings were fully supported by record evidence)

7250-5000 Disqualification for bias and prejudice

Schorr Stern Food Corp. **248 NLRB No. 050**
(although documents pertaining to correspondence between respondent and RD, and also internal memorandum between GC and RD, had erroneously been placed in *formal* instead of *informal* case file, Bd held backpay proceeding before ALJ was not prejudiced as result, and did not require ALJ to disqualify himself from case or to dismiss backpay specification; documents were either not relevant to backpay proceeding or were otherwise not prejudicial, and E's counsel was given full opportunity at hearing to examine documents)

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**
(contention that ALJ in original hearing should be disqualified because of bias and prejudice from participation in supplemental hearing, and that hearing de novo should be held before different ALJ, rejected)

7250-5020 Bias must appear on face of record

Redlands Christian Migrant Association **250 NLRB No. 027**
(respondent's contention that ALJ was biased as result of its refusal to settle case rejected in view of lack of conduct by ALJ showing improper attempt to secure settlement or of indication in his findings and conclusions that he prejedged case or showed bias)

7250-5040 Intemperate language

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(no impropriety, bias and lack of due process evidenced by ALJ's failure to credit testimony of E's witnesses and his use of words and phrases that are incisively descriptive and damning to E; ct's reading of cold record did nothing to instill confidence in testimony of E's witnesses, and substantial evidence supports finding that E's firing of U activists was particularly petty and vindictive)

7250-5050 Improper conduct of hearing, credibility resolution or inferences

Local No. 3, Electrical Workers (Nixdorf Computer Corporation) **252 NLRB No. 082**
(ALJ's taking judicial notice of credibility findings made in another case held not reversible error, notwithstanding fact that it is generally inappropriate for ALJ to rely on credibility findings made in another case; here, ALJ did not predicate his credibility resolutions on credibility findings in companion case, but rather based his resolutions on demeanor of witnesses and record as whole)

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(ct held E did not receive fair and impartial hearing where during hearing ALJ made several inexcusable and injudicious attacks upon E's president, one of which was particularly directed to his ethnic background, which could not but taint entire proceeding)

7250-5060 Resolution of all issues against respondent not evidence of bias

Tom's Ford, Inc. **253 NLRB No. 125**
(no basis for finding ALJ biased merely because he resolved important factual conflicts in favor of GC's witnesses)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(no impropriety, bias and lack of due process evidenced by ALJ's failure to credit testimony of E's witnesses and his use of words and phrases that are incisively descriptive and damning to E; ct's reading of cold record did nothing to instill confidence in testimony of E's witnesses, and substantial evidence supports finding that E's firing of U activists was particularly petty and vindictive)

7600 HEARING

7601 GENERALLY

The Saloon, Inc. **247 NLRB No. 156**
(GC's contention that, in addition to alleged violations, certain other violations should be found, based on evidence adduced during trial, rejected, since it would be unfair inasmuch as respondent was never put on notice that such conduct was under scrutiney)

7612 CONTINUANCE OF HEARING

7612-3300 Discretionary with ALJ

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

7612-6700 Grounds for continuance

7612-6767 Insufficient

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(E's mtn for continuance properly denied by ALJ where examination of record showed ALJ did not abuse his discretion in denying E's mtn)

7612-6767-4500 Obtaining evidentiary records for hearing

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**
(E's motion for continuance to obtain criminal record of witness for impeachment purposes, denied, where issue was first raised at original hearing, E had ample opportunity prior to supplemental hearing herein to obtain such record, and further delay in instant hearing is unwarranted)

7612-6767-5000 Engagement of counsel in other proceeding

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(due process not denied where hearing proceeded w/o Respondent's labor counsel when counsel failed to appear at hearing w/o submitting timely written request for second continuance and w/o justifying giving precedence to other matter, and at subsequent reconvening of hearing failing to appear w/o any previous form of request for continuance)

7612-6767-8700 Grounds created by party's own action

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**

(continuance to prepare defense denied where factual basis for GC's amendment arose from materials submitted by Respondent in response to *subpoena duces tecum* and Respondent cannot claim surprise as to legal implications of requested documents)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**

(where Respondent's counsel withdrew from case 14 days prior to hearing continuance denied because withdrawal caused by fact that counsel also represented co-defendant in case and defendants had created this untenable situation themselves)

7625 SEPARATION OF WITNESSES

7625-3300 Discretionary with ALJ

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(ALJ's ruling permitting sequestration of witnesses on mtn of charging party which was made after GC's first witness had completed direct testimony w/i ALJ's discretion since respondent did not demonstrate that ruling had prejudiced its case)

7637 EXAMINATION OF WITNESSES

7637-0100 Generally

Arizona Public Service Company **247 NLRB No. 054**

(ALJ's ruling sustaining GC's objection to question to U representative by E's counsel at hearing regarding what U's bargaining posture would have been had E not refused to bargain over mandatory subject of subcontracting of unit work held not prejudicial to E's defense, since inquiry was directed at subjective intentions of U's negotiators about a proposal which they never tendered to E)

7637-3300 Leading questions

Stanley M. Feil, Inc. **250 NLRB No. 065**

(reliability of answers to questions is enhanced when the questions are nonleading and simply put to witness so as to elicit exactly what was said. Such has resulted in procedural requirements that witnesses be questioned in a nonleading manner, even on cross-examination, before leading questions can be used)

7650 PRODUCTION OF STATEMENTS OF WITNESSES

7650-0100 Generally

Ronald Hackenberger d/b/a Ron's Trucking Service v. N.L.R.B. **628 F.2d 966 (C.A. 6, 1980)**

(ct held that E failed to establish that Bd had improperly computed back pay of discharged Ee where ct rejected E's contention that E was prevented from showing that Ee failed to act reasonably to mitigate his damages because Bd denied FOIA request for information in its possession relating to interim employment, since counsel for E failed to request continuance or adjournment in order to familiarize himself with this material when information concerning interim employment was provided at or near beginning of supplemental back pay proceeding)

7650-2000 What constitutes statement

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

(Bd agent writing something while witness spoke and nothing more did not qualify as statement w/i R/R 102.118(d))

7650-4000 Producible only after witness has testified

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

7662 CONDUCT OF HEARING BY ALJ

7662-1400 Rulings on motion

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**

(E's mtn to strike testimony of alleged discriminatee on grounds that GC failed to produce statement allegedly made by discriminatee to Bd's Regional Office held properly denied by ALJ where examination of record showed that alleged statement never existed)

Crown Cork & Seal Company, Inc. **253 NLRB No. 035**

(Bd denied mtn to strike certain portions of GC's brief to ALJ where GC did not file exceptions or brief with Bd and brief to ALJ was not formally before Bd; furthermore, E did not suffer any prejudice by ALJ ruling denying mtn since ALJ made no credibility findings concerning objectionable material)

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**

(mtn to dismiss 8(b)(4)(B) complaint on grounds that Charging Party did not respond to subpoena ad testificandum, denied because public policy matters are being litigated; furthermore, Respondent could have sought enforcement of subpoena or introduced secondary evidence)

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**

(where GC refused to consent to respondent's motion for dismissal of specified allegation, ALJ felt obliged to reserve decision thereon and subsequently made ruling disposing of issue)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**

(respondents' mtn to postpone trial denied absent showing of good cause therefor and in view of scheduling of trial date 4 months before, respondents' failure to file ans to GC's amended C, and GC's counsel's own commitments and preparation for trial in other cases)

Alumbaugh Coal Corporation **247 NLRB No. 112**

(exceptions to ALJ's denial of E's mtn to dismiss complaint and objection because of participation on behalf of charging party by individual who was regional Bd Ee at time of representation ptn and charge, and subsequently joined law firm of counsel for charging party; his participation was minimal and not shown to have prejudiced E's rights)

7662-2800 Rulings on objections

Bide-A-Wee Home Association **248 NLRB No. 110**

(E's exception to ALJ's rulings overruled, as Bd found that rulings were correct and that E had failed to show prejudice thereby where E's purpose was only to show more of Ee's U activity than it had already shown, and result would have been same)

7662-4200 Exclusion or admission of evidence

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**

(E not prejudiced by ALJ's revoking subpena of material allegedly demonstrating conflicts that would disable petitioner from representing E's Ees, where record provided adequate basis for determining appropriateness of petitioner's representation; further evidence did not warrant depriving Ees of their right to choose petitioner as their representative)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(ritht to question validity of authorization cards not waived by failure to object to authenticity of cards and their admission into evidence; further, where issue of validity of cards raised and litigated by cross-examination of authenticating witnesses and discussion in brief of testimony regarding possible misrepresentation in solicitation, validity of cards should be considered on merits)

Nice-Pak Products, Inc. **248 NLRB No. 173**

(where E failed to produce evidence in response to subpoena but then during trial introduced material based on that evidence, admission proper where GC examined materials at start of hearing and had opportunity to examine list after it was intorduced into evidence)

Carbonex Coal Company **248 NLRB No. 107**

(charging party's mtn to strike factual allegations of Respondent's exceptions based on certain exhibits which ALJ had refused to accept into evidence denied because Respondent had excepted to evidentiary rulings and having done so may present arguments based upon such exhibits notwithstanding GC and charging party were not able to cross examine witnesses concerning disputed exhibits)

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 084**

(ALJ's statement at hearing that he believed Bd had jurisdiction and then directed parties not to brief on issue of jurisdiction over E, not prejudicial, notwithstanding that ALJ subsequently dismissed complaint because he found that GC had failed to establish that Bd has jurisdiction, statement was made after GC made his decision as to what evidence to put in record on issue of jurisdiction)

Atlanta Baking Company, Inc. **JD-288-80**

(ALJ reaffirmed rejection of respondent's exhibits showing that RD had declined to issue C after investigating charges against respondents similar to those herein, since GC has exclusive authority to issue Cs, so that RD's dismissal of similar charges was not *res judicata*, and the exhibits thus contained no probative evidence applicable herein)

7662-8400 Control of conduct of counsel

Catalina Yachts **250 NLRB No. 048**

(Bd rejected charging party's mtn to bar respondent's attorneys from further practice before Bd because alleged misconduct was not of such aggravated character as to warrant such action)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(ALJ refused to countenance conduct of respondent's attorney who engaged in such tactics as preventing Bd from exercising its statutory authority, engaged in unwarranted attacks upon Bd personnel, and engaged in other conduct for purpose of inducing error into record upon appeal; due process suffered at hands of one who was most plaintiff in demanding it)

7662-9200 **Misconduct by Administrative Law Judge**

Pioneer Natural Gas Company **253 NLRB No. 003**
(Bd found no merit in E's contention that ALJ was prejudiced against E and unduly pressured it to settle case by alleged off-the-record comments where it was incumbent upon counsel for E immediately to request that any alleged comments be repeated on record, to make timely objection thereto, and to move that ALJ disqualify himself; moreover, E's claim of impropriety was not made until after ALJ had issued decision and thus not timely raised; in any event, ALJ's findings were fully supported by record evidence)

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(ct held E did not receive fair and impartial hearing where during hearing ALJ made several inexcusable and injudicious attacks upon E's president, one of which was particularly directed to his ethnic background, which could not but taint entire proceeding)

7682 PROCEDURAL DUE PROCESS AT HEARING

7682-3300 **Due process not denied by**

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(contention that, since ULP conduct alleged herein included conduct found to support U's objections to election, Bd cannot give E fair hearing because it has already considered facts which U presented to it ex parte w/o hearing, rejected; since Bd's decision was based on E's own written materials and its own witnesses' admissions, no hearing is required; issues herein, which differ in the two types of proceedings, will be decided upon evidence submitted in instant case; and Bd's findings as to objections are not binding on ALJ nor must results necessarily be consistent because cases arise out of same situation)

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(respondent not denied due process by nature of hearing on remand from court, since it had ample opportunity to present its evidence and rebut testimony and failed to meet its burden of showing any prejudice to its substantive rights by GC's active participation in the hearing, even if such was departure from his customary role in proceedings of this kind)

Ronald Hackenberger d/b/a Ron's Trucking Service v. N.L.R.B. **628 F.2d 966 (C.A. 6, 1980)**
(ct held that E failed to establish that Bd had improperly computed back pay of discharged Ee where ct rejected E's contention that E was prevented from showing that Ee failed to act reasonably to mitigate his damages because Bd denied FOIA request for information in its possession relating to interim employment, since counsel for E failed to request continuance or adjournment in order to familiarize himself with this material when information concerning interim employment was provided at or near beginning of supplemental back pay proceeding)

7682-3305 Refusal to allow substitution for employer's designated representative

I/O Optics Limited, U.S.A. **251 NLRB No. 037**
(ALJ did not abuse discretion in not permitting E's designated representative to participate in hearing and assist E's counsel in preparation of defense pursuant to Rule 615 of Federal Rules of Evidence, or in not adjourning hearing until representative would be available, where individual originally designated was unable to participate and ALJ refused to allow another designated representative to participate as requested by E because second individual had been sequestered as witness as problem was E's own creation)

7682-3320 Failure to comply with subpoena

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**
(mtn to dismiss 8(b)(4)(B) complaint on grounds that Charging Party did not respond to subpoena ad testificandum, denied because public policy matters are being litigated; furthermore, Respondent could have sought enforcement of subpoena or introduced secondary evidence)

7682-3335 Refusal to sequester witness

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(ALJ's failure to sequester discriminatee during testimony of other discriminatee not prejudicial error where hearing was conducted prior to *Unga Painting Corp.* 237 NLRB 1306, in which Bd held absent special circumstances mtn to sequester should be granted when a discriminatee is testifying about events as to which another discriminatee has, will or may testify; under rules in effect at time of hearing ALJ was w/i discretion in refusing to sequester discriminatee)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**
(ALJ's ruling permitting sequestration of witnesses on mtn of charging party which was made after GC's first witness had completed direct testimony w/i ALJ's discretion since respondent did not demonstrate that ruling had prejudiced its case)

7682-3349 Absence of party's counsel at hearing

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(due process not denied where hearing proceeded w/o Respondent's labor counsel when counsel failed to appear at hearing w/o submitting timely written request for second continuance and w/o justifying giving precedence to other matter, and at subsequent reconvening of hearing failing to appear w/o any previous form of request for continuance)

7682-3356 Denial of motion to file reply brief

The Nestle Company, Inc. **251 NLRB No. 142**
(ALJ accepted and considered respondent's reply brief, notwithstanding GC correctly argued that Bd's R/R do not provide for submission of reply briefs, because GC was not prejudiced thereby)

7682-3363 Board rules and procedures

The Nestle Company, Inc. **251 NLRB No. 142**
(ALJ accepted and considered respondent's reply brief, notwithstanding GC correctly argued that Bd's R/R do not provide for submission of reply briefs, because GC was not prejudiced thereby)

7682-3370 Limitation of examination of witnesses

Hedison Manufacturing Company **249 NLRB No. 096**
(Bd held ALJ, while fully warranted in precluding E's official from testifying because he refused to comply with subpoena and to testify, erred in precluding E from calling witnesses other than official; since E's asserted reasons for discharges involved herein must rest upon testimony of witnesses as to relevant events, *best evidence* rule involved in cases relied on by ALJ held not applicable to discharges; accordingly, Bd severed and remanded discharge cases to ALJ for supplemental decision)

Arizona Public Service Company **247 NLRB No. 054**
(ALJ's ruling sustaining GC's objection to question to U representative by E's counsel at hearing regarding what U's bargaining posture would have been had E not refused to bargain over mandatory subject of subcontracting of unit work held not prejudicial to E's defense, since inquiry was directed at subjective intentions of U's negotiators about a proposal which they never tendered to E)

7682-3384 Revocation of subpoena

Howard Johnson Company **250 NLRB No. 161**
(ALJ properly revoked E's subpenas directed to RD and U seeking authorization cards and related documents, even though ptns for revocation may not have conformed to Bd's R/R, where E was in no way prejudiced thereby, and material sought was irrelevant to issues herein since GC based C on U's winning of election and not on majority of authorization cards; moreover, E made no claim that it had obtained prior written consent for disclosure of official information as required by Bd's R/R)

Howard Johnson Company **250 NLRB No. 161**
(ALJ properly revoked E's subpenas directed to Bd's associate executive secretary seeking information regarding Bd decisions as to E's requests for review of RD's D/O directing election; since E did not actually receive from Bd copies of telegrams denying its requests for review, E was not prejudiced by revocation of its subpenas, and E made no claim that it had obtained prior written consent for disclosure of information as required by Bd's R/R)

7682-3391 Absence of specific allegations or notice where adequate notice exists

Lighthouse For The Blind of Houston **248 NLRB No. 178**
(lack of notice in formal C held nonpreducial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

7691 PARTICIPATION BY PARTIES

7691-5000 **Introduction of documentary evidence**

St. Regis Paper Company **247 NLRB No. 105**
(correct to draw adverse inference from Respondent's failure to submit documentary evidence in support of its contention that *transfer of work was economically motivated*)

8000 ALJ DECISION AND PROPOSED FINDINGS

8001 GENERALLY

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(Bd's findings and conclusions as to objections to election in R case are not binding upon ALJ where same conduct is alleged as ULPs, since issues drawn are different in the two types of proceedings)

8001—Cont.

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**
(where ALJ had failed to make critical credibility determinations regarding conflict in testimony of GC's witnesses--who claimed that on a certain date U and respondent E had reached oral agreement on terms of contract--and E's witnesses--who denied that such agreement was reached on that date--, Bd remanded proceeding for ALJ to make credibility determination regarding conflicting testimony)

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 084**
(ALJ's statement at hearing that he believed Bd had jurisdiction and then directed parties not to brief on issue of jurisdiction over E, not prejudicial, notwithstanding that ALJ subsequently dismissed complaint because he found that GC had failed to establish that Bd has jurisdiction; statement was made after GC made his decision as to what evidence to put in record on issue of jurisdiction)

8001-3700 Board will not overrule ALJ's credibility resolutions unless contrary to clear preponderance of all relevant evidence (Standard Dry Wall Products)

Eastern Engineering & Elevator Co., Inc. **247 NLRB No. 004**
(in overruling ALJ's credibility findings, Bd found based on reasonable inferences from record as a whole that E unlawfully laid off experienced Ee before new Ees in retaliation for Ee's filing internal U charges against fellow Ee and that E's reasons for Ee's layoff were pretexual)

8001-4000 Decision must be based on record only

Service Garage, Inc. **247 NLRB No. 115**
(ALJ's finding of no U animus on E's part based on his observation of E and Ees during hearing but not while testifying is impermissible reliance on conduct not w/i record)

8001-4400 ALJ's failure to detail conflicts in evidence not indication that such evidence not considered

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(failure to explicate reasons for crediting witnesses where there is conflicting testimony on record not error where credibility findings are inherently consistent with ALJ's uncontroverted findings)

Kiawah Island Company, Ltd. **247 NLRB No. 050**

8001-4700 ALJ's resolution of important factual conflicts against party not bias

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(allegation of bias based on ALJ's resolution of important factual conflicts in favor of witnesses testifying for U held w/o merit)

8001-4800 ALJ's substitution of his judgment for that of party

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(ALJ found, based on entire record, that surface bargaining charge had no merit; contrary finding would place ALJ in judgment upon substantive terms of collective bargaining agreement)

8001-5000 ALJ bound by Board precedent and dispositions

Howard Johnson Company **250 NLRB No. 161**
(ALJ held that Bd's denials of E's requests for review of RD's D/O directing election are binding on ALJ; E is free to request Bd to reconsider its determination and, in event of adverse decision, to seek ct review, but Bd's dispositions are not reveiwable by ALJ)

Charmer Industries, Inc. **250 NLRB No. 031**
(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

8075 VARIANCE BETWEEN FINDINGS AND COMPLAINT

8075-0100 Generally

Visu-Craft By H.B.S., Inc. **JD-887-79**
(E held to have violated Act by maintaining and enforcing unlawful security clause notwithstanding violation not alleged in complaint where legality of provision presented as matter to be considered at hearing and was closely related to allegations of unlawful assistance to U and unlawful discharge pursuant to provision)

8075-5000 Findings on issues fully litigated

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(unlawfulness of no-solicitation rule, although not alleged in complaint, found proper issue in case and fully litigated where E injected rule into proceedings as defense to allegation in complaint of another violation)

Pioneer Natural Gas Company **253 NLRB No. 003**
(Bd rejected E's contention that unlawful discharge was not embodied in allegations of complaint and therefore denial of due process, where issue of whether Ee was discharged for her insistence that another Ee take racial complaint to supervisor, was fully litigated and misconduct found was clearly related to conduct specifically alleged)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(finding of violation proper, notwithstanding allegations of complaint that Respondents' threatened to picket jobsite inadequate to state violation since it might be presumed that Respondents' would engage in lawful picketing and were giving secondary E opportunity to restrict picketing by establishing gate for non-U contractor, as allegation of complaint sufficient to put Respondents' on notice that statements were in issue and threat was fully litigated)

Behring International, Inc. **252 NLRB No. 055**
(although not alleged in complaint, unlawful conduct held closely related to matters actually alleged, formed part of alleged misconduct, and was fully litigated at hearing)

Illinois Bell Telephone Company **251 NLRB No. 128**

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(although issue was not specifically alleged in complaint, Bd affirmed ALJ's finding independent 8(a)(5) violation where issue was fully litigated and related to heart of complaint which alleged other instances of disregard of obligation to bargain with U; moreover, operative event regarding this matter was essentially admitted by E)

Peat Manufacturing Company **251 NLRB No. 153**
(and record fully supported conclusion, and violation found is closely related to violations alleged in complaint)

Weyerhaeuser Company **251 NLRB No. 097**
(Bd and ALJ expected to pass upon issue although not specifically alleged to be ULP in complaint if matter was fully litigated)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(where issue is fully litigated at hearing it is not necessary that it have been specifically alleged in C for ALJ to make finding)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(Respondent not deprived of due process where threat not alleged in C held to be violation since allegation fully litigated)

Cain's Generator and Armature Company, Inc. v. N.L.R.B. **628 F.2d 933 (C.A. 6, 1980)**
(Bd's finding of violative wage increase was consistent with matters alleged and litigated and cannot serve as basis to reverse Bd's decision by ct)

8075-7500 Findings on issues not fully litigated

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**
(where violation was neither alleged in complaint nor litigated at hearing ALJ finding of violation not adopted by Bd)

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**
(violation not found where GC did not allege claimed ULP in C nor advance it as theory of C and GC and E resolved issue by settlement agreement in prior, related proceeding)

8400 EXCEPTIONS AND BRIEFS

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(E's extensive exceptions and brief challenging several of ALJ's findings such as factual finding that there was no evidence regarding E's statement to Ee pertaining to disciplinary warning, overruled; ALJ's error was insignificant in given instance and did not undermine ALJ's decision; E's other exceptions, neither separately nor cumulatively, cast any doubt on ALJ's finding of unlawful conduct on part of E)

8433 EXCEPTIONS

Eastern Maine Medical Center **253 NLRB No. 024**
(E's mtn to strike charging party's answer to its exceptions on ground answer raised issues not dealt w/i E's exceptions and constituted new exceptions which were not timely filed, denied; charging party's suggestion of additional remedies in responde to E's exceptions regarding ALJ recommended provisions does not justify striking entire answer, particularly since E was afforded opportunity and did file response with respect to those issues)

8433-0100 Generally

Bay Medical Center, Inc. **252 NLRB No. 159**
(where E had consistently refused to bargain with charging party on basis that unit was inappropriate rather than on basis charging party lacked authority to demand bargaining and had admitted identity of bargaining agent in answer, E is estopped to assert in exceptions to ALJ's decision that charging party lacked authority to demand bargaining)

8433-2500 Who may file

Land Equipment Inc. **248 NLRB No. 098**

8433-2500—Cont.

(Bd did not disturb ALJ's description of unit absent exceptions thereto by either party notwithstanding intervenor's contention that description was incorrect)

8433-3300 Time for filing

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(rejection of exceptions filed by E in French, not unfair and prejudicial, where exceptions were not timely filed, copies were not served on other parties to proceeding, and it really was not necessary for E to address exceptions in French)

8433-5000 Effect of failure to file or late filing

Teamsters & Auto Truck Drivers, Local No. 85 (William Volker and Company) **253 NLRB No. 089**
(GC's mtn to strike brief in support of exceptions granted where R's brief untimely filed)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**
(request granted though E, acting on own behalf, notified Bd prior to deadline for filing exceptions that it intended to file exceptions and there was possibility that it would need extension of time, and then asked for extension prior to deadline although request not received until after date)

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(on ct remand, Bd affirmed ALJ's finding that U's general refusal to make referrals was not unlawful, where GC failed to litigate such issue; U was w/o adequate notice from hearing and briefs that refusal was issue as independent violation and was deprived of opportunity to present relevant defense evidence, GC also failed to comply wtih Bd's R/R by not filing specific exceptions concerning issue, and it would be difficult to infer that GC intended to maintain issue as part of theory of case as it was originally presented to Bd)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(where Respondent filed cross-exceptions and answering brief but Bd failed to receive them prior to its decision, Bd's original order rescinded in order for it to be able to consider those documents)

8433-5033 Adoption as Board order under section 10(c)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(in absence of exception to ALJ findings Bd may still review findings since Bd has authority to modify or set aside any finding or order made or issued by it until case shall have been filed in ct)

8433-6700 Form and specificity required

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(GC's exception to ALJ's dismissal of all allegations of complaint not found violations of Act lacked specificity required by Bd's R/R and was not adequate notice of request to consider issue of general refusal to refer which ALJ had found not unlawful; R/R Sec. 102.46(b))

Ditch Witch of Central Illinois, Inc. **248 NLRB No. 052**
(resubmitting to Bd brief that was originally submitted to ALJ is insufficient to place in issue any finding of ALJ that Bd can review in regards to specific *exceptions*)

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(rejection of exceptions filed by E in French, not unfair and prejudicial, where exceptions were not timely filed, copies were not served on other parties to proceeding, and it really was not necessary for E to address exceptions in French)

8433-9900 Cross exceptions

Thermo King Corporation **247 NLRB No. 048**
(U's motion for special leave to file answering brief to E's cross-exceptions granted for limited purpose of answering questions raised in such exceptions; however, such brief not considered insofar as it exceeded scope of E's cross-exceptions (R/R Sec. 102.46(f)(1))

8467 BRIEFS

8467-0100 Generally

B. E. & K., Inc. **252 NLRB No. 036**
(*briefs* should not be used as means of making *motions*, such as motion to amend complaint made herein)

Ernst Construction, Div. of Ernst Steel Corporation **JD-826-79**
(where ALJ was informed that U's representative had not received copy of E's brief, ALJ, in absence of mtn to strike E's brief, reminded E's counsel of his obligation to forward copies of all post-hearing documents to all parties)

8500 RECORD IN UNFAIR LABOR PRACTICE PROCEEDING

8550 AUGMENTATION

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(mtn for leave to introduce new evidence denied where only effect of proffered evidence would be *only to circumstantially bear upon witness' credibility* which was not crucial to Bd's acceptance of ALJ's finding of violation)

8600 ORAL ARGUMENT

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 009**
(oral argument denied because record, exceptions, and briefs adequately represented issues and positions of parties)

8800 BOARD DECISION

8860 FINDINGS

8860-0100 Generally

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(Bd not required to give elaborate explanation of factors warranting bargaining order but to estimate impact of ULPs on liklihood of fair rerun-election)

8860-3300 Board not bound by ALJ reasoning or use of data

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(Bd not inhibited by references drawn by ALJ but may draw legitimate inferences from proven facts)

8860-3500 Board not bound by its previous reasoning or decisions

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(while agency is free to change its policies as it determines are in public interest, it must supply reasoned analysis indicating why its departure from precedent)

8860-4100 Board not bound by ALJ recommendations

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(Bd has broad discretion to fashion remedies to effectuate policies of Act because relation of remedy to policy is singularly connected to Bd's competenceand knowledge gained from experience; therefore, since Bd, notALJ, was given such discretion, Bd's rejection of ALJ's recommended remedy is of no consequence)

8860-8300 Disavowal of ALJ's statements

Southwestern Bell Telephone Company **251 NLRB No. 062**
(Bd disavowed ALJ's gratuitous comments regarding right of E to limit participation of U representative at an investigatory interview of Ee)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(Bd disavowed ALJ's statement that U's objective during strike, as an alternative to obtaining more money, is to put E out of business if he does not yield)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(while agreeing with ALJ that strike was economic at its inception, Bd disavowed his characterization of GC's withdrawal of one 8(a)(5) complaint allegation to the effect that as of date strike started, E unlawfully paid its strike replacements higher wages than it had offered during negotiations as a *legal admission* that strike was an economic one)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(while agreeing with ALJ's finding that E's inistence during negotiations on proposal depriving strikers of accrual of seniority for period they were on strike was unlawful, Bd disavowed ALJ's reliance on any adverse effect E's seniority plan might have on strikers' pensions, vacation, or other substantive benefits)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(Bd disavowed ALJ's characterization of E as being myopic in her legal obligations but incapable of firing anyone for U related reasons where record showed E was capable of blatant discriminatory conduct)

8860-8700 Findings of cumulative violations not necessary where order on those found would provide adequate remedy for others alleged

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**

MGM Grand-Reno, Inc. **249 NLRB No. 153**

8860-9100 Variance between findings and complaint

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

8860-9101 Generally

Pease Company **251 NLRB No. 080**
(although unlawful reinstatement of strikers was not specifically alleged in complaint, it was closely related to failure to reinstate allegation, and since composite testimony of strikers involved was credited regarding issue, finding of violation was warranted)

8860-9150 Findings on issues fully litigated

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(violation where E failed to apply contract to all Ees in appropriate unit and failed after contract's expiration to continue to maintain provisions of contract or to bargain for a new contract covering all unit Ees while erroneously insisting that a large number of Ees were not included in unit; although failure to apply existing contract to all unit Ees was not alleged as violation, matter was fully litigated, since it and later violation both turned on question of who was in appropriate unit)

The Baughman Company **248 NLRB No. 186**
(exception to ALJ's finding of unlawful unilateral change in Ees' workweek on grounds that it was not alleged in C overruled, since matter was reasonably related to C's other allegations and was fully litigated)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against him* held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

8860-9175 Findings on issues not fully litigated

Safeway Stores, Inc. **252 NLRB No. 095**
(order narrowed and E ordered to furnish only that information which complaint alleged it refused to furnish since E's failure as to other information requested was not litigated)

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(on ct remand, Bd affirmed ALJ's finding that U's general refusal to make referrals was not unlawful, where GC failed to litigate such issue; U was w/o adequate notice from hearing and briefs that refusal was issue as independent violation and was deprived of opportunity to present relevant defense evidence. GC also failed to comply wtih Bd's R/R by not filing specific exceptions concerning issue, and it would be difficult to infer that GC intended to maintain issue as part of theory of case as it was originally presented to Bd)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(Bd reversed ALJ finding of joint Es where issue was neither alleged in complaint nor fully litigated at hearing, and Stipulation for Certification Upon Consent Election listed Es separately)

The Nestle Company **248 NLRB No. 106**
(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Ee, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

9000 COSTS AND FEES

9200 REOPENING OF RECORD AND REMAND

9233 CIRCUMSTANCES WARRANTING REOPENING OF RECORD

9233-0100 Generally

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(Bd abused discretion when it refused to reopen record to receive evidence of sale of facility since bona fides of E's intent to sell facility was central issue, actual sale w/i few months was highly relevant)

9233-3300 Previously unavailable evidence

ABC Trans-National Transport, Inc. **247 NLRB No. 025**
(mtn to reopen record denied where respondent failed to show that proffered evidence was unavailable at time of hearing)

9233-5000 Evidence previously presented but not considered

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

9233-6700 Newly discovered evidence

9233-6750 Must be such as to probably change outcome

Chef's Pantry, Inc. **247 NLRB No. 018**
(although it was error to reject U's proffer of evidence purporting to show that E violated Act, it was not necessary to reopen hearing to take proferred testimony since offer of proof showed that receipt of such evidence would not materially affect decision or remedy in the case)

9250 CIRCUMSTANCES NOT WARRANTING REOPENING OF RECORD

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(E's contention in its exceptions that discharged Ees were supervisors under Act rejected as untimely where issue of supervisory status was raised neither in pleadings nor at hearing before ALJ)

Seafarers International Union of North America, Pacific District, AFL-CIO, and Its Affiliates (American Pacific Container Lines, Inc. (AMPAC)) **252 NLRB No. 105**
(U's mtns to reopen record denied where proffered documents to be added to record would not constitute evidence to support U's contentions)

St. Francis Hospital **252 NLRB No. 174**
(E's mtn to reopen record which asserts that subsequent to hearing, Ee was arrested for distributing marijuana, pleaded guilty to charge, and that E has policy of discharging such Ees, more appropriately left to complaince stage of proceeding)

Herman Brothers, Inc. **252 NLRB No. 121**
(mtn to reopen record for purpose of introducing into evidence arbitration award concerning discharge alleged unlawful herein which was issued subsequent to hearing, denied, since it had been concluded deferral to previous arbitration award involving discharge would contravene policies of Act)

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(on ct remand to Bd for determination of whether U's general refusal to make referrals was not unlawful as found by ALJ, Bd held it would be improper exercise of its power to remand case for second hearing, since doing so would violate Bd procedures and Sec. 10(e) and would substantially delay resolution of case involving 24 proven discriminatees for almost 6 years in order to allow litigation of theory which GC had never properly advocated before Bd)

Bacchus Wine Cooperative, Inc., and Bacchus Wine International **251 NLRB No. 207**
(Bd declined to reopen record to admit evidence of E's alleged *business reverses* making reinstatement of unlawfully discharged Ees to comparable positions impossible, since such matters are more appropriately handled at compliance stage of proceeding)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(E's mtn to reopen record to receive allegedly new, previously unavailable evidence of previously unavailable witness denied where E had failed to allege that witness was crucial to its case and E had failed to request continuance)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(Respondent's mtn to reopen record to introduce memorandum allegedly refuting Bd holding it alter ego, denied, absent evidence memorandum was newly discovered, that Respondent excusably ignorant of its existence and acted with due diligence to uncover and introduce it; further, when C was amended to allege alter ego relationship ALJ allowed Respondent additional time to rebut evidence on issue and Respondent never availed itself of opportunity)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(Bd denied respondent's mtn for leave to adduce additional evidence purportedly showing that one of its witnesses testified truthfully at hearing,

9250—Cont.

since respondent had had opportunity to bolster witness's testimony when it was placed in issue at hearing, and Bd will not reopen record to admit evidence which merely relates to credibility)

American Pistachio Corporation **249 NLRB No. 174**
(mtn to reopen record for receipt of additional evidence denied where evidence was neither newly discovered nor unavailable at hearing; moreover it would not have affected result if accepted)

B. N. Beard Company **248 NLRB No. 016**
(although it would have been better if ALJ had issued decision setting forth his reasons for dismissal of complaint, Bd held failure to do so was nonprejudial error and remand in compliance with R/R Sec. 102.45 unnecessary, where ALJ set forth on the record his reasons for dismissing complaint, GC had fully argued merits of dismissal, and no party has requested remand for purpose of issuance of decision)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 006**
(mtn for remand to RD for taking further evidence denied because there was no adequate showing that proffered evidence was newly discovered or previously unavailable)

Actors' Equity Association **247 NLRB No. 172**
(U's mtn for leave to reopen record to adduce further evidence regarding certain issue and to file brief in response to issues raised in GC's exceptions and supporting brief denied, where U failed to show any extraordinary circumstances warranting reopening of record, and issue in question was considered at hearing and all parties had opportunity to present evidence relating thereto)

Tartan Marine Company **247 NLRB No. 073**
(mtn to reopen record to determine if bargaining order warranted on basis of Ee turnover, and lapse of time since ULPs, denied, notwithstanding dismissal of complaint in prior case in which E was Respondent)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(mtn at end of trial to reopen record to receive evidence of numerous measures taken by E *to assure compliance* with Act, which evidence assertedly was not proffered during hearing because available since that time, denied; evidence is of minimal relevance, it would not alter conclusions as to remedy, and it involves matters of general compliance with labor laws rather than substantive obligations; moreover, events took place well after operative misconduct and were not addressed specifically to its redress)

9258 REMAND FOR DE NOVO HEARING

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**
(contention that ALJ in original hearing should be disqualified because of bias and prejudice from participation in supplemental hearing, and that hearing de novo should be held before different ALJ, rejected)

9267 CIRCUMSTANCES WARRANTING REMAND

9267-3300 To receive additional evidence

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **253 NLRB No. 029**
(case remanded to ALJ for purpose of conducting further hearing on issue of E's objection to election under *General Knit of California, Inc.*, 239 NLRB 619, where ALJ relied solely on formal papers submitted in R proceeding in analyzing E's objection and resolved the case entirely on application of standard set out in *Shopping Kart Food Market, Inc.*, and, on last day of hearing in the R proceeding, w/o knowledge of parties to the R proceeding, Bd, in *General Knit of California, Inc.*, overruled *Shopping Kart Food Market, Inc.*)

Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO (Southern Illinois Builders Association) **252 NLRB No. 108**
(remand to RD for purpose of ascertaining whether discriminatee incurred medical expenses for which he is entitled to recover under E's health and welfare plan; Bd rejected discriminatee's plan that medical claims be submitted directly to carrier for determination of coverage)

Reliable Roofing Company, Inc. **250 NLRB No. 069**
(E's mtn for reconsideration granted to consider evidence relevant to Bd's finding that E unlawfully withdrew from multi-E bargaining; i.e., whether multi-E group actually existed or E's withdrawal privileged and further contention that compliance with resulting order would force E into bankruptcy, since E's submissions, if accepted as accurate, would be deemed sufficient to dismiss C)

Hedison Manufacturing Company **249 NLRB No. 096**
(Bd severed and remanded discharge cases to ALJ for supplemental decision, where ALJ erred in precluding E's witnesses, whose testimony was relevant to events surrounding discharges, from testifying because E's official had refusal to comply with subpoena and to testify)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

9267-6700 For additional findings

Savannah Wholesale Company **251 NLRB No. 087**
(where ALJ credited Ee to extent that he found E had knowledge of fellow Ee's U activity before latter was discharged, but ALJ did not resolve credibility issue as to whether statement indicating E's knowledge was actually a threat as alleged, Bd, being unable to make determination on 8(a)(1) allegation, severed such allegation and remanded to ALJ for appropriate findings)

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**
(where ALJ had failed to make critical credibility determinations regarding conflict in testimony of GC's witnesses--who claimed that on a certain date U and respondent E had reached oral agreement on terms of contract--and E's witnesses--who denied that such agreement was reached on that date--, Bd remanded proceeding for ALJ to make credibility determination regarding conflicting testimony)

Bullock's **247 NLRB No. 040**
(remand for further findings (1) as to whether dischargee had obtained information in Ees' performance evaluations innocently or wrongfully and whether such activity was therefore concerted and protected or not, (2) as to other alleged reasons for her discharge and (3) resolution of conflict between testimony of dischargee and other Ee so as to make determination as to whether discharge violated 8(a)(1))

9267-7500 Pursuant to direction of court

Fort Vancouver Plywood Company **252 NLRB No. 142**
(on remand, original order, reinstating nonshareholder discriminatees affirmed where Respondent had not met its burden of proving that, to the time of present hearing, it would have eliminated jobs of any of discriminatees for other than unlawful reasons)

9287 CIRCUMSTANCES NOT WARRANTING REMAND

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**
(notwithstanding valid objection to election, because of delinquency on part of E to raise objection Bd did not abuse its discretion in refusing to reopen record)

9600 FURTHER CONSIDERATION, RECONSIDERATION OR MODIFICATION OF ORDER

9625 BOARD AUTHORITY TO RECONSIDER OR MODIFY ORDER

9625-3300 Where record not yet filed in Court of Appeals

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(in absence of exception to ALJ findings Bd may still review findings since Bd has authority to modify or set aside any finding or order made or issued by it until case shall have been filed in ct)

9650 CIRCUMSTANCES WARRANTING RECONSIDERATION

9650-5000 Denied where all matters raised in motion had been previously considered

N.L.R.B. v. Lane Aviation Corporation **615 F.2d 759 (C.A. 6) (1980)**
(Bd erred in reopening case after it had issued decision where moving party did not adduce any previously unexamined evidence in support of their mtn to reopen since all issues suggested by affidavits attached to mtn were thoroughly explored before ALJ and at Bd's initial hearing nor were there allegations of supervening events or extraordinary circumstances as required under R/R 102.48(d); thus Bd contravened its own regulations which an administrative agency has no power to do)

9675 CIRCUMSTANCES WARRANTING MODIFICATION OF ORDER

MCC Pacific Valves, A Unit of Mark Controls Corporation **253 NLRB No. 050**
(R/O amended to include additional Ees entitled to backpay and reinstatement)

Advance Pattern and Machine Corporation d/b/a Gibraltar Sprocket Company **JD-51-80**

9675—**Cont.**

(order requiring reinstatement of discriminatorily discharged strikers modified by agreement of parties to not require reinstatement of 2 strikers who engaged in picket line misconduct; hearing on issue unnecessary where parties resolved disputed questions)

9800 COURT REMAND

9900 OTHER PROCEDURAL MATTERS

Safeway Stores, Inc. **252 NLRB No. 184**
(any dispute over application of guidelines concerning costs of compilation and furnishing requested information will be treated in compliance stage of proceeding)

600 REMEDIAL ORDER PROVISIONS

601 GENERALLY

2500 NATURE AND PURPOSE

2514 EFFECTUATION OF POLICIES OF ACT (10(c))

Independent Stave Company **248 NLRB No. 025**
(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(Bd's choice of remedy in matter w/i its own discretion, open only to limited review; Bd's choice of remedy should stand *unless it can be shown that order (to pay U's reasonable negotiating expenses and Bd's and U's reasonable litigation costs) is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of the Act*)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**
(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See, *Fibreboard*, 379 US 203)

2528 PROTECTION OF PUBLIC, NOT PRIVATE, RIGHTS

Thermo Transport, Inc. **JD-584-80**
(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

2542 PREVENTING RECURRENCE OF UNLAWFUL ACTIVITY

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(in absence of Bd orders for reinstatement and backpay, sole effect of finding of ULP is issuance of c/d order which prevents similar (violative) activity in future; no hardship to E where Bd retroactively changed its position regarding presence or absence of stenographers at negotiating sessions, now found to constitute *non-mandatory* subject of bargaining)

2556 REMOVAL, DISSIPATION, OR AVOIDANCE OF CONSEQUENCES OF ULPS

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(U entitled to both certification and bargaining order if it wins election after revised tally of ballots is issued; bargaining order will issue only to correct any unilateral changes E may have made during time it had obligation to bargain with U)

Apple Tree Chevrolet, Inc. **251 NLRB No. 076**
(Bd proceeds with tabulation of challenged votes for election results not out of any doubt concerning bargaining order remedy, but so as not to preclude U from enjoying any benefits to which it may otherwise be entitled as certified representative; moreover, Bd's established procedure to provide both remedies is because certification alone would not suffice to correct any unilateral changes E may institute between period when bargaining obligation commenced and issuance of certification, and further prolong E's refusal to bargain based on U's institution of still another ULP proceeding)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(*modus operandi* for providing information on job vacancies filled and applications filed, unless parties otherwise agree in writing, enunciated in remedy provided by ALJ)

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(E's refusal to reinstate certain Ees and its discharge of others for strike misconduct cannot support back-pay order in instant case since there was no ULP strike)

2570 RESTORATION OF STATUS QUO ANTE

Pittsburgh--Des Moines Steel Co. **253 NLRB No. 086**
(request for order that upon resumption of bargaining E place before U those same proposals for contract which was before U prior to E's ULPs denied, since normal bargaining order will suffice to remedy violation)

Scott Printing Corporation **249 NLRB No. 134**
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante*, since contract of sale was *sham* transaction)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(in cases involving discriminatory termination of operations, restoration of *status quo ante* continues to be proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(where Bd finds discriminatory conduct, restoration of *status quo ante* is proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

2584 REMEDIAL, NOT PUNITIVE

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(punitive damages were not permitted under Railway Labor Act for U's breach of duty of fair representation)

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(fundamental purpose of fair representation suits is to compensate for injuries caused by violations of Ees' rights)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(Bd's remedial order concerning *company-wide dissemination of notice and access to company plants*, not punitive since notice and access order was designed to counteract use E made at other plants of its ULPs in bargaining at instant plant)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd's power to command affirmative action is remedial not punitive and is to be exercised in aid of Bd's authority to restrain violations and as means of removing consequences of violation which thwart purposes of Act)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(bargaining orders are always remedial and are designed to set matters as they would have been in absence of E's misconduct)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**
(as violation for collecting assessment only technical in nature and U could still go against members who paid assessment but now request reimbursement, or pass proper assessment against members, Bd order, by placing heavy burden on U for locating and reimbursing all members who paid said assessment, held punitive and not appropriate)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punative relief; injury was ambiguous)

3700 AUTHORITY OF BOARD

3701 GENERALLY

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(Bd's choice of remedy in matter w/i its own discretion, open only to limited review; Bd's choice of remedy should stand *unless it can be shown that order (to pay U's reasonable negotiating expenses and Bd's and U's reasonable litigation costs) is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of the Act*)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**

3701—Cont.

(Bd has broad latitude in ascertaining appropriate remedial measures, and its decision must be given *special respect*; ct will not disturb Bd's order unless it is patent attempt to achieve ends other than those which effectuate policies of Act)

N.L.R.B. v. Columbia Building Materials, Inc. **624 F.2d 193(T) (C.A. 9, 1980)**

(Bd's task is to fashion remedy for ULPs that will restore economic status quo that would have existed but for ULP; backpay order herein w/i remedial authority of Bd since it does no more than return affected Ees to economic state which they would have enjoyed absent unilateral wage change)

3750 WHERE NO VIOLATION OF ACT

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(cab companies not liable for *dues and initiation fees which (U) - would have received* had it been recognized as representative of lessee-drivers, since companies committed no ULP in refusing to recognize U)

3775 FRIVOLOUS LITIGATION

Standard Refinery Union, Inc. **JD-632-80**

(assessment of litigation expenses against respondent U, unwarranted where dispute concerning correctness or incorrectness of E's name was compared to typical *8(a)(5)* type proceeding wherein parties seek to test underlying certification proceeding; pleadings were not frivolous)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(*not-debatable* defense not same as *frivolous* defense; terms are not necessarily coextensive)

5000 SCOPE OF ORDERS

5025 BREADTH IN RELATION TO SPECIFIC VIOLATION

5025-0100 Generally

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**

(in exercising its great discretion in determining what curative measures are needed with respect to a particular violation, Bd may properly consider past conduct which may affect scope of effective remedy; however, remedial order is to be based on conduct found unlawful in current proceedings, and Bd is not empowered to monitor on continuing basis activities of E or U found to have committed ULPs or to impose on periodic basis additional requirements because of a past violation)

5025-3300 Broad orders

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **248 NLRB No. 040**

(ct refused to enforce as too overly broad Bd order which provided that E c/d generally from refusing to bargain in good faith with U)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**

(broad order warranted where E laid off all but skeleton work force one week after Bd agent scheduled pre-election hearing and closed plant after U won election)

5025-3301 Generally

Patsy Bee, Inc. **249 NLRB No. 125**

(broad order issued in view of serious and egregious nature of violations)

Owen Joint Corporation **248 NLRB No. 076**

(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

5025-3309 Repetition of ULPs likely

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**

5025-3318 Prior ULP proceedings against same respondent

St. Francis Hospital **252 NLRB No. 174**

(broad order appropriate where same E had been found to have committed numerous violations of Act 2 years before)

5025-3327 Violation goes to heart of Act

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**

5025-3332 Violation of fundamental employee rights

Mazda of Anchorage **253 NLRB No. 112**

(broad inj relief appropriate in view of E's egregious and widespread misconduct where it refused to bargain, unlawfully discharged Ees, granted pay raises to discourage support for U, threatened to close facility, proposed to Ee that they convert their status to independent contractors, and threatening to lock Ees out)

Owen Joint Corporation **248 NLRB No. 076**

(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

General Rental Co. d/b/a Avis Rent--A--Car **247 NLRB No. 188**

(narrow injunctive order rather than broad order, appropriate where, although E's ULP included discharge of Ee because of his U activities, U had not been shown that E had proclivity to violate Act or had engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental rights)

5025-3372 Planned program of using unlawful tactics

Mazda of Anchorage **253 NLRB No. 112**

(broad inj relief appropriate in view of E's egregious and widespread misconduct where it refused to bargain, unlawfully discharged Ees, granted pay raises to discourage support for U, threatened to close facility, proposed to Ee that they convert their status to independent contractors, and threatening to lock Ees out)

5025-3379 Discriminatory conduct of a serious nature

Rodeway Inn of Las Vegas **252 NLRB No. 053**

(in light of standards set forth in *Hickmott Foods, Inc.* and widespread misconduct of E which clearly demonstrates general disregard for its Ees' fundamental statutory rights, Bd used broad inj language *in any other manner*)

5025-6700 Narrow orders

Behring International, Inc. **252 NLRB No. 055**

(E's violations which included unlawful subcontracting, layoffs, interrogations, promises and threats held not to meet test of egregious or widespread misconduct as to demonstrate general disregard for Ees' statutory rights, and only *like or related conduct* proscribed rather than broad c/d order issued)

5025-6701 Generally

United States Postal Service **250 NLRB No. 156**

(narrow order substituted for broad order where E made threats of disciplinary action in violation of 8(a)(1))

Owen Joint Corporation **248 NLRB No. 076**

(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

5050 PERSONS BOUND BY ORDER

5050-1000 Persons not named in complaint

Sachs Electric Company **248 NLRB No. 092**

(neither E association nor E-member held liable for U's action in unlawfully requesting that members of sister Us, who had been referred out of U's hiring hall quit their jobs in favor of unemployed members of U inasmuch as complaint did not specify either one as respondent with respect to incident and their liability was not fully litigated)

5050-1500 Successor employers

Winco Petroleum and Cooper Oil Company, Inc., Successor Employer **252 NLRB No. 150**

(order requiring successor E to bargain with predecessor's U, held appropriate, where predecessor voluntarily recognized and bargained with U, violated 8(a)(1), (3) and (5) and was required under *Gissel* to bargain with U, and successor E purchased predecessor's business with actual knowledge of predecessor's ULPs)

Westwood Import Company, Inc. **251 NLRB No. 162**

(successor E responsible for remedying its predecessors refusal to bargain where it purchased business with full knowledge of predecessor's ULPs)

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**

(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**

(ability to secure reduction in sales price by purchasing corporation because of outstanding Bd order is factor in supporting its policy of enforcing orders against successors; however, here, where purchaser and seller owned by same individual and therefore unlikely to profit from any price reduction, this factor becomes irrelevant)

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**

(Bd's R/O enforced against successor E who had knowledge of outstanding order as public policy is served because *Ees who have been retained by* *successor will understandably view their job situation as unaltered*; thus, those Ees who were witness to predecessor's attempt to chill U activity might well be discouraged from U activity at successor)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(modified order was not addressed to successor E where sucessor E had already done what original order would have required to be done)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(in proper case Bd may order successor E which has not violated Act to remedy its predecessor's ULPs)

5050-3400 Multi-employer association

Sachs Electric Company **248 NLRB No. 092**
(E association and E-member held not liable for U's unlawful conduct in discriminating against U members in matter of placement on exclusive hiring hall referral list where adequate safeguards were present in form of appeals committee arbitration procedure provided for in contract; consequently, Es had not turned over their hiring practices to U so as to subject themselves to absolute liability for all wrongful acts of U)

5050-3800 Members of multi-employer association

Sachs Electric Company **248 NLRB No. 092**
(E association and E-member held not liable for U's unlawful conduct in discriminating against U members in matter of placement on exclusive hiring hall referral list where adequate safeguards were present in form of appeals committee arbitration procedure provided for in contract; consequently, Es had not turned over their hiring practices to U so as to subject themselves to absolute liability for all wrongful acts of U)

5050-6200 Receiver or trustee in bankruptcy

Retail Delivery Service, Inc., and Robert A. Baime, Esq. **JD-486-80**
(as receiver of E under Bankruptcy Act and trustee in bankruptcy, named individual has been successor in law or *alter ego* of E, and Bd's order of reparation for backpay due Ee is provable against said trustee as debt of bankrupt E owed to Bd as agent for Ee)

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

5050-8300 Unions jointly engaged in ULP

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(international U held equally responsible with local U for violations because of status of international vice president as *trustee* of local, his awareness of and participation in local's discrimination involved in layoffs of Ees by E, and his condonation and ratification of such acts)

5050-9100 Agents of employer

5050-9137 President of corporation

5050-9137-3300 As individual

G and M Lath and Plaster Co., Inc. and Its Aler Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(president and sole stockholder of corporation performing lath and plaster work held personally liable to remedy ULPs)

G and M Lath and Plaster Co., Inc. and Its Aler Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(sole proprietor of corporation that supplies plastering and stucco materials held not to be personally liable for ULPs, notwithstanding corporation was alter ego of subcontracting corporation and president of such subcontracting operation was held solely liable, where proprietor of alter ego had no financial interest in corporation prior to receiving its stock in payment of a debt and neither took part in management of nor received any income from project where ULPs were committed)

5062 INDIVIDUAL LIABILITY OF OFFICERS, AGENTS, AND REPRESENTATIVES

Miami Foundry Corporation **252 NLRB No. 002**
(mtn granted dismissing former owner and president of corporation as individual respondent where he was not individually *alter ego* of single integrated enterprise which, resulted from corporaton's acquisition of another corporations stock)

5075 TERRITORIAL SCOPE OF ORDERS

5075-2200 All of employer's plants

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(ct recognizes that Bd can order E to cease ULPs at its other plants on proof of violation at one location when company-wide policy is involved)

5075-3300 All of employer's construction

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(Bd ordered that Respondents c/d from threatening and picketing with object of forcing or requiring Es, or inducing and encouraging Ees, in violation of Sections 8(b)(4)(i) and (ii), to cease d/b/b with non-U contractor generally rather than only at construction projects at which violations took place herein)

Wright & Lopez of Alabama **250 NLRB No. 051**
(Bd included construction contractor's geographic locations in its unit description that were included in *commerce statement and Stipulation for Certification Upon Consent Election* agreement duly executed by E, notwithstanding E denied doing business at one location described; E could move to amend certification in appropriate proceeding)

5087 TIME LIMITATION OF ORDER

Land Equipment Inc. **248 NLRB No. 098**
(order applying contract retroactively to date it was signed including period beyond 10(b) period, appropriate where respondent had actively attempted to conceal from U 1)existence of one company it had formed to supply labor to its other company with which U had contract and 2) fact that some Ees dispatched by U to latter company appeared on former company's payroll)

7500 AFFIRMATIVE DEFENSES

7512 CLEAN HANDS DOCTRINE

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that estoppel exists as result of actions by Bd, GC, and U whereby E was deprived of right to hearing on U's objections to election, and hearing on complaint issued against U and, consequently, GC and U do not seek bargaining order with *clean hands*, rejected, where there was no impropriety on U's part or any irregularity in actions of Bd or GC, E did not show it had any *right* to hearing on objections or to require that GC not settle complaint against U, and this is not proper forum for assessing remedy against U)

7542 ECONOMIC HARDSHIP

Acme Wire Works, Inc. **251 NLRB No. 209**
(E's argument that if it had been required to pay amount specified in backpay proceeding it would have been forced out of business speculative; E bound by terms of collective-bargaining agreement)

7560 GENERAL COUNSEL'S FAILURE TO REQUEST REMEDY

Arizona Public Service Company **247 NLRB No. 054**
(absent any request by GC for order requiring reinstatement of status quo ante in case involving unlawful refusal by E to bargain over subcontracting of unit work, and absent allegations or evidence of unilateral action by E, order requiring unit Ees to be *made whole* held unwarranted)

7590 MOOTNESS

7590-0900 Compliance with ALJ's decision or settlement agreement

United States Postal Service **JD-(SF)-273-79**
(settlement reinstated where complaint alleged conduct that occured before and after settlement agreement, and though all allegations fully litigated, finding of no violations relatinng to post settlement allegations established that E had fully complied with settlement agreement)

7590-1000 Compliance with Board decision

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(E's sale of plant to unrelated successor who fulfilled all requirements of Bd order did notrender order moot)

7590-1800 Change in ownership or management of business

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(E's sale of plant to unrelated successor who fulfilled all requirements of Bd order did notrender order moot)

7590-3100 Discontinuance of illegal conduct

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(institution of new hiring hall procedures and referral system subsequent to issuance of complaint alleging operation of hiring hall in unlawful manner did not obviate need for remedial order since discontinuance of ULP does not dissipate ifs effect)

7596 CHANGED CIRCUMSTANCES

7596-0800 Change in Board policy

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring ***reimbursement*** in instant case as Bd required to make reasoned explanation for departing from its precedents)

7596-1200 Intervening court decision

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(where Bd issued bargaining order and ct set it aside, remanding to Bd for further proceedings and Bd reinstated bargaining order, ct affirmed Bd, E's institution of new plant rules while bargaining order set aside violative as Bd may make bargaining order retroactive to date U achieved majority status)

7596-2400 Bankruptcy

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

Shippers Interstate Service, Inc. v. N.L.R.B. **618 F.2d 9 (C.A. 7, 1980)**

7596-2800 Insolvency

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**
(fact that title to equipment is now vested in bank, and that foreclosure sale intervened between predecessor's disappearance and successor's emergence pose no legal bar to Bd's finding of successorship where *employing industry* test is met)

7596-5200 Sale of business

Scott Printing Corporation **249 NLRB No. 134**
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante*, since contract of sale was *sham* transaction)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(affirmative action ordered tobe taken by E in original order was eliminated from modified order, since that action had already been taken by successor towhom E sold plant)

625 ORDERS AGAINST EMPLOYERS

1100 CEASE-AND-DESIST ORDERS

1133 OMNIBUS CLAUSES

1133-2500 Broad orders (in any other manner)

St. Francis Hospital **252 NLRB No. 174**

(broad order appropriate where same E had been found to have committed numerous violations of Act 2 years before)

Rodeway Inn of Las Vegas **252 NLRB No. 053**

(in light of standards set forth in *Hickmott Foods, Inc.* and widespread misconduct of E which clearly demonstrates general disregard for its Ees' fundamental statutory rights, Bd used broad inj language *in any other manner*)

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**

(where unlawfully discharged Ee distributed letter derogatory to E after ALJ issued decision, Ee entitled to reinstatement as letter stated truth about his discharge and repeated his original offer to represent Ees concerning matters of common concern)

Brooks Cameras, Inc. **250 NLRB No. 116**

(broad order warranted in view of egregious nature of E's retaliatory conduct directed at Ees because of their U-related activities and its attempt through unlawful discharges to undermine and destroy U's representative status among unit Ees)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

(appropriate where respondent's unlawful conduct, including interrogation and discharges of 5 Ees, was extensive and reached most of entire Ee complement)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

Standard Homes, Inc. **249 NLRB No. 146**

(broad order inappropriate absent showing of proclivity to violate Act, or egregious and widespread misconduct as to demonstrate general disregard for Ees' statutory rights)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**

(nature of E's ULPs warranted issuance of broad cease-and-desist order under standards set forth in *Hickmott Foods* (directing Ees to observe and report on other Ees' U activities, violative))

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**

(severe nature of E's discharges dissipating one-half of the unit, coupled with other violations, warrants broad injunctive relief--under *Hickmott Foods* analysis)

Clinton Inn **249 NLRB No. 022**

(broad order not warranted)

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(order warranted, in view of Es' misconduct that was widespread as to number of violations and egregious as to their nature)

1133-5000 Narrow orders (in any like or related manner)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**

(notwithstanding E's admissions in its brief and in testimony in defense of specific ULPs before ALJ that it discharged Ees who refused to recant their prior protected concerted activities and that it offered improper support of organizational activities by Ees, Bd found ALJ's broad order unwarranted where matters relied on by ALJ were inadequate to indicate proclivity to violate Act since they were neither alleged nor litigated as violations and E's admissions did not indicate that E would ignore statutory rights of its Ees in future)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

American Sunroof Corporation; et al. **248 NLRB No. 038**

(appropriate absent proclivity to violate Act or such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental rights)

Routh Packing Company, Inc. **247 NLRB No. 053**

(Bd order used narrow cease-and-desist language it traditionally provides to remedy 8(a)(3) and (1) violations)

1167 CEASE-AND-DESIST ORDERS RELATING TO SPECIFIC VIOLATIONS

Arizona Public Service Company **247 NLRB No. 054**

(E ordered to c/d from insisting on unlawful placing of limits on scope of bargaining over subcontracting of unit work)

1167-0100 Generally

Hedison Manufacturing Company **249 NLRB No. 096**

(notwithstanding unresolved question regarding alleged unlawful discharges, herein remanded to ALJ, Bd issued order requiring E to c/d from engaging in unlawful activity and to bargain with U, since resolution of remanded issue did not affect Bd's conclusion that E's extensive ULPs had tendency to undermine U's majority and to impede election process, where ULPs ranged from discriminatory layoffs, unlawful imposition of conditions for transfer of Ees, threats of reprisal, and acts of surveillance and coercive interrogation directed at substantial number of Ees)

1167-5000 Unilateral actions

Kraft Foods, Inc. **251 NLRB No. 006**

(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Coyne Cylinder Company **251 NLRB No. 198**

(c/d order, rather than make-whole remedy appropraite for violation of Ee's *Weingarten* rights, where there was no evidence to indicate that any information obtained during unlawful interview which preceded Ee's discharge for smoking marijuana during his lunch breaks was relied on by E as basis for discharge)

Pease Company **251 NLRB No. 080**

(E ordered to c/d from making any unilateral changes w/o first bargaining in good faith with U to either new contract or to impasse; nothing herein shall be construed as requiring E to rescind benefits previously granted to Ees but which were found unlawful)

1167-6000 Section 8(e)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

1600 REPETITIVE ORDERS

1900 ORDERS TO ALLEVIATE EFFECT OF FRIVOLOUS LITIGATION

1933 WHAT CONSTITUTES FRIVOLOUS LITIGATION

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

(*extraordinary remedy* ordering E to reimburse U for its collective bargaining expenses appropriate only when defenses raised were so insubstantial as to be patently frivolous not when defenses, as in instant case, are clearly nonmeritorious)

Eastern Maine Medical Center **253 NLRB No. 024**

(while instant case was strong candidate for imposition of litigation expenses remedy, such remedy not imposed in view of Bd majority's position on issue to the effect that such remedy will not be imposed even in an egregious case

1933—Cont.

of bad faith bargaining unless E's defenses are deemed *frivolous*; while many of E's defenses were wide of mark and unpersuasive, they cannot with confidence be labeled frivolous)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 155**
(issues not frivolous where determination of whether E had objective basis for good faith doubt of U's majority status required an evaluation as to credibility of E's witness's testimony about U admission of loss of majority status)

Wellman Industries, Inc. **248 NLRB No. 029**
(E's positions regarding its refusal to bargain were twice rejected throughout course of litigation covering entire federal judiciary system, and its latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

1967 TYPES OF ORDER PROVISIONS (SEE ALSO 625-5570)

1967-4900 Reimbursement to union for organizational and negotiation expenses

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E must reimburse U for its bargaining expenses where E engaged in prolonged course of ULPs designed to thwart U's efforts to negotiate contract)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reimbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse U for any excess organizing costs it reasonably incurred from date E willfully flouted its lawful duty to recognize U)

1967-5600 Reimbursement of litigation expenses (See also 625-5570)

Eastern Maine Medical Center **253 NLRB No. 024**
(while instant case was strong candidate for imposition of litigation expenses remedy, such remedy not imposed in view of Bd majority's position on issue to the effect that such remedy will not be imposed even in an egregious case of bad faith bargaining unless E's defenses are deemed *frivolous*; while many of E's defenses were wide of mark and unpersuasive, they cannot with confidence be labeled frivolous)

Safeway Stores, Inc. **252 NLRB No. 095**
(U's legal fees and expenses not assessed against E, notwithstanding U's contention that assessment justified by E's frivolous defenses to its clear obligation to furnish information and facts given other charges alleging failure to furnish information had been filed against E during past ten years, where all but two charges had been settled prior to ALJ's decision, and E had frequently furnished information to U but had never before been asked for this type of information)

Safeway Stores, Inc. **252 NLRB No. 184**
(assessment of reasonable legal fees and expenses incurred by U in pursuing charge that E refused to supply U requested information, denied where history of charges (against E) and settlements did not seem to show callous disregard by E of its collective-bargaining obligations)

Charmer Industries, Inc. **250 NLRB No. 031**
(circumstances insufficient to support allegation of frivolous litigation so as to warrant requiring respondent Es to bear costs of litigation herein)

Standard Homes, Inc. **249 NLRB No. 146**
(reimbursement of U and Bd for litigation costs not awarded where respondent's defense of its conduct were not patently frivolous)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reimbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse Bd and U for all litigation expenses, relating to meritorious ULP allegations and reasonably incurred as result of lengthy proceeding herein where, as in past, E reacted to organizing attempt by engaging in surveillance, creating impression thereof, promising and granting benefits, and unlawfully interfering with organizing campaign)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(disavowing ALJ's characterization of order requiring E to pay Bd and U litigation costs as *traditional in Stevens cases*, Bd noted that it reviews all cases on their merits and grants or denies remedies based on record as a whole)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

1967-6100 Reimburse union for bargaining expenses

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(*extraordinary remedy* ordering E to reimburse U for its collective bargaining expenses appropriate only when defenses raised were so insubstantial as to be patently frivolous not when defenses, as in instant case, are clearly nonmeritorious)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

1967-7000 Reimbursement to union of lost initiation fees, dues, etc. (See also 625-5596)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(cab companies not liable for *dues and initiation fees which (U) - would have received* had it been recognized as representative of lessee-drivers, since companies committed no ULP in refusing to recognize U)

1967-8400 Reimbursement to employees for lost benefits

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E who unlawfully failed to make insurance payments ordered to reimburse Ees for payments Ees may have made to third party carriers)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punative relief; injury was ambiguous)

1967-9999 Other

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(request that order include imposition of *interim grievance procedure* whereby E is required to reduce to writing all its existing terms and conditions of employment and to discuss and process Ee grievances denied for reasons stated in *J. P. Stevens, 239 NLRB No. 95*)

2200 ORDERS RELATING TO AGREEMENTS

2233 INVALIDATION OF CONTRACTS

2233-0900 Contracts with dominated or unlawfully assisted unions

Baine Service Systems, Inc. **248 NLRB No. 087**
(cease giving effect to and cancel contract entered into by E and U which lacked majority status)

2267 ORDERS CONCERNING CONTRACTUAL BENEFITS

2267-3300 Restoration of benefits

2267-3325 Insurance coverage

Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO (Southern Illinois Builders Association) **252 NLRB No. 108**

(remand to RD for purpose of ascertaining whether discriminatee incurred medical expenses for which he is entitled to recover under E's health and welfare plan; Bd rejected discriminatee's plan that medical claims be submitted directly to carrier for determination of coverage)

2267-6700 Make employees whole for loss of benefits

Pullman Building Company **251 NLRB No. 145**

(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**

(Bd left to compliance stage question of whether E must pay additional amounts into various funds in order to satisfy make-whole remedy since provisions of Ee benefit fund agreements were variable and complex and Bd did not provide at adjudicatory stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments)

The Saloon, Inc. **247 NLRB No. 156**

(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

2283 ORDERS CONCERNING BENEFITS UNLAWFULLY GRANTED

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

(*upon request of U* revoke unilateral changes in rates of pay, wages, and other terms and conditions of employment until such time as E negotiates with U in good faith to *agreement* or *impasse* thereon)

2291 ORDERS CONCERNING BENEFITS UNLAWFULLY WITHHELD

Independent Stave Company **248 NLRB No. 025**

(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

3300 REINSTATEMENT ORDERS

3301 GENERALLY

Babcock & Wilcox Co. **249 NLRB No. 099**

(where unlawfully discharged U president was permitted to retire voluntarily on disability, normal backpay and reinstatement order held not applicable, and since discharge probably made him ineligible to hold or retain U office, E ordered to correct its records, deleting any reference to *discharge* and simply substituting therefor, the term *retirement* or *retirement on disability, accompanied by notification to U of such action*)

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**

(reinstatement order to remedy Sec. 8(a)(3) violation proper notwithstanding it imposes financial burden on E because E's unlawful conduct is root cause of burden and it and not Ees should bear burden)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**

(where strike not ULP strike, ct will not enforce Bd's order of reinstatement and backpay; record was devoid of evidence that impasse over nonmandatory subject (presence of stenographers at negotiating sessions) contributed to U's decision to strike)

3317 ENTITLEMENT OF EMPLOYEES TO REINSTATEMENT

3317-0100 Generally

N.L.R.B. v. Markle Manufacturing Company of San Antonio **623 F.2d 1122 (C.A. 5, 1980)**

(consent order, which was agreed to by U and E and which directed cessation of strike violence by U, tolled any duty on part of E to reinstate strikers and any concomitant liability for back pay until second order determining fact issue of misconduct was entered since it shifted burden of proof on right to reinstatement and E was not required to reinstate Ees whose alleged conduct was subject of order unless and until alleged facts concerning violence were found not to have existed)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**

(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See, *Fibreboard*, 379 US 203)

3317-0150 Fitness determination

High Performance Tube, Inc. **251 NLRB No. 181**

(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying list of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

3317-0900 Discriminatees

National Car Rental System, Inc. **252 NLRB No. 027**

(offer unit Ees jobs with backpay at relocated facility which they would have been offered absent discrimination against them; E must dismiss, if necessary, any persons hired to replace these Ees as result of such discrimination)

Southwestern Bell Telephone Company **251 NLRB No. 061**

(reinstate discharged Ee where information leading to discharge obtained during interview at which Ee was unlawfully denied his *Weingarten* rights; notwithstanding Ee confessed to theft of company property during interview as E relied solely on confession in making his decision)

High Performance Tube, Inc. **251 NLRB No. 181**

(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying lest of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

Ace Beverage Co. **250 NLRB No. 066**

(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

Western Clinical Laboratory, Inc. v. N.L.R.B. **633 F.2d 225(T) (C.A. 9, 1980)**

(substantial evidence supported Bd's finding that Ee was competent medical technologist and entitled to reinstatement)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**

(E not required to reinstate office clerical Ee who was unlawfully discharged by predecessor E where E did not hire any of predecessor's office clericals and thus E was not successor with regard to predecessor's office clerical worker unit)

3317-1200 ULP strikers

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**

(provisions for reinstatement and make whole relief for strikers appropriate where economic strike was converted into ULP strike)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**

(strikers entitled to unconditional reinstatement as ULP strikers where E had refused to bargain with U as representative of seasonal as well as nonseasonal workers and as E cannot unilaterally change scope of recognized bargaining unit, its attempt to do so made strike an unfair labor strike)

3317-1700 Economic strikers

Pennypower Shopping News, Inc. **253 NLRB No. 011**

(E, by causing Ees reasonably to believe that they had been discharged, or that their continued employment status was questionable because of their strike activities, put Ees in position whereby they were under no obligation to seek reinstatement; reinstatement ordered by Bd)

Ace Beverage Co. **250 NLRB No. 066**

(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

C-F Air Freight, Inc. **247 NLRB No. 060**

(defense to order requiring reinstatement and backpay based on assertion that order was *unfair* and unjustified and that participation of Ees in strike herein, which was basis for other ULP cases brought against U and were subject of settlement agreements, was tantamount to Ees' ratification of U's alleged misconduct which they had not disclaimed responsibility for or knowledge of, rejected)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**

(existence of bona fide replacements for economic strikers did not justify E's failure to offer strikers positions available, since economic striker is entitled

3317-1700—Cont.

to reinstatement if and when a job for which he is qualified becomes available; fact that his old job is occupied is no excuse for refusing to make reinstatement offer)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(E's contention that it should be obligated to offer reinstatement only to those economic strikers who responded to its letter regarding reinstatement, rejected, where U's offer to return to work was bona fide and unconditional, E had no substantial business justification for failing to reinstate strikers, E's letter merely inquired into strikers' interest in future job openings and, consequently, strikers were under no obligation to respond to E's letter)

3317-2300 **Supervisors**

Pennypower Shopping News, Inc. **253 NLRB No. 011**
(supervisor included in reinstatement and backpay order, since E's conduct, including discharge of supervisor, was part of pattern of conduct aimed at coercing Ees in exercise of Sec. 7 rights)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**
(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(supervisors discharged for organizational activity not entitled to reinstatement, although it has been ordered where discharge had tendency to interfere with Sec. 7 rights of protected Ees)

3317-2900 **Laid-off employees**

B. E. & K., Inc. **252 NLRB No. 036**
(various offers of jobs to laid off Ees held not bona fide *reinstatement offers,* where offers were consistent with E's design to get rid of U adherents at time of pending election)

Hedison Manufacturing Company **249 NLRB No. 096**
(laid off Ees held entitled to reinstatement and backpay w/o regard to any effect layoff might have had on them if parties had bargained in good faith about layoff; while Ees were laid off because of lack of work in their department, it was their refusal to accept unlawfully imposed restrictions on their transfers to other departments, and their acceptance of layoff instead, which ultimately caused their loss of employment plantwide, not merely their loss of employment in their department)

3317-3000 **Discharged employees**

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(Ee discharged after unlawfully administered polygraph test showed he had stolen company property ordered reinstated where E did not prove that Ee would have been discharged without results of test)

Illinois Bell Telephone Company **251 NLRB No. 128**
(where Ee was discharged based on information obtained during interview at which she was unlawfully denied presence of representative, reinstatement proper to rectify harm caused; also all references to disciplinary action taken must be expungent from E's files)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(male Ees discharged pursuant to contract with U security clause unlawfully applied to them to be reinstated with backpay)

3317-8100 **Employees hired for specified period or job**

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(Bd remedy applying to future projects, proper)

3317-9600 **Employees who quit**

Penn-Dixie Steel Corporation, Joliet Bar Mill
Division **253 NLRB No. 012**
(reinstatement and backpay warranted where Ee signed confession of misconduct and resigned during investigatory interview in which he was denied right to U representation)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

3333 MANNER OF REINSTATEMENT

3333-2000 **Reinstatement to former or substantially equivalent position**

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(where discharged Ee accepted E's offer of reinstatement unlawfully conditioned on Ee's acceptance of different work schedule and was unlawfully laid off day following his reinstatement, Bd ordered E to reinstate Ee to position he held on day he was discharged or to substantially equivalent position)

3333-2012 Includes interim benefits and promotions

Gulf States United Telephone Company **253 NLRB No. 087**
(E required to offer discriminatee who was probationary Ee at time of unlawful discharge reinstatement as permanent Ee where he was discharged during probationary period, was considered satisfactory Ee and would have completed 90 days service absent his unlawful discharge)

3333-2030 Only within specified location or unit

Earl Kunis d/b/a Frenchy's K & T and Earl's
News Stand **247 NLRB No. 167**
(reinstatement to positions discriminatees occupied before unlawful transfer to another store)

3333-2050 Position not substantially equivalent where

3333-2050-0900 **Probationary employee**

Gulf States United Telephone Company **253 NLRB No. 087**
(E required to offer discriminatee who was probationary Ee at time of unlawful discharge reinstatement as permanent Ee where he was discharged during probationary period, was considered satisfactory Ee and would have completed 90 days service absent his unlawful discharge)

Wright Plastic Products, Inc. **247 NLRB No. 101**
(determination of whether discriminatees who were rehired on probationary basis have been retained beyond probationary period left to compliance stage of proceeding)

3333-2050-3200 **Different job classification**

Charge Card Association **247 NLRB No. 119**
(E's offer to have strikers return to work only as probationary Ees not valid offer)

3333-2050-3900 **Seasonal employment only**

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

3333-6000 **Discharge of replacements**

National Car Rental System, Inc. **252 NLRB No. 027**
(offer unit Ees jobs with backpay at relocated facility which they would have been offered absent discrimination against them; E must dismiss, if necessary, any persons hired to replace these Ees as result of such discrimination)

3333-8000 **Validity of reinstatement offer**

3333-8033 Mechanics of offer

3333-8033-1200 **Receipt of offer**

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(offer of reinstatement communicated to discriminatee's roommate not valid offer)

3333-8033-4000 **Offer through union as agent**

Birmingham Ornamental Iron Company **251 NLRB No. 115**
(E's collective offer to reinstate ULP strikers through U as strikers' agent upon U's unconditional offer on behalf of strikers to return to work fulfills E's obligation to notify strikers date they should return to work)

3341 APPLICATION FOR REINSTATEMENT

3341-0100 **Generally**

Matlock Truck Body & Trailer Corp., and Its Agent
Roy L. Matlock **248 NLRB No. 075**
(no abandonment of job as bar to reinstatement where discriminatee did not respond to letter from E to U giving ULP strikers deadline to return to work absent evidence discriminatee was aware of letter and since discriminatee had previously made application to return to work, burden was on E to reinstate)

Matlock Truck Body & Trailer Corp., and Its Agent
Roy L. Matlock **248 NLRB No. 075**
(once offer made to return to work by strikers, burden shifts to E to reinstate them)

3341-2500 **Requirement that application be made**

Inta-Roto, Inc. **252 NLRB No. 111**
(ULP strikers who were unlawfully notified that they had been permently replaced found not violatively discharged because despite this notification, no evidence to show that request for reinstatement would be *utterly futile* and Ee required to request to be reinstated)

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

Matlock Truck Body & Trailer Corp., and Its Agent
Roy L. Matlock **248 NLRB No. 075**

3341-2500—Cont.

(offer by U on behalf of all ULP strikers sufficient)

Andersen Sand & Gravel Company **JD-655-80**

(backpay runs from date of ULP strikers' discharges rather than from their unconditional offer to return to work, since Bd no longer requires such offer to start running of backpay period)

3341-5000 Adequacy

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**

(Bd does not require *artistic request for reinstatement* but rather, in each case, determines whether facts warrant conclusion that individual desired reinstatement)

3341-7500 What constitutes unconditional application

Pease Company **251 NLRB No. 080**

(U's letter to E held continuing, effective, and unconditional application for reinstatement of all strikers, where letter clearly advised E that application was on behalf of its Ees, and E had no reasonable basis upon which to conclude that application was on behalf of less than all of the strikers, or that it was on behalf of anyone other than the strikers; fact that many strikers submitted individual requests did not vitiate validity of U's application)

3350 Affirmative Defenses

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

3350-0400 Failure to apply for reinstatement

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**

(ct held proper Bd order of reinstatement and back pay from date of unlawful discharge for Ee until offered reinstatement by E as consistent with remedial policies of Act)

3350-0700 Refusal to reinstatement offer

Don Pizzolato, Inc. **249 NLRB No. 136**

(where Ee did not return application form to former E, this was not considered rejection of valid offer of reinstatement as application clearly indicated interview was needed and was conditional offer)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(no abandonment of job as bar to reinstatement where discriminatee did not respond to letter from E to U giving ULP strikers deadline to return to work absent evidence discriminatee was aware of letter and since discriminatee had previously made application to return to work, burden was on E to reinstate)

Custom Wood Interiors, Inc. **248 NLRB No. 023**

3350-1100 Misconduct during strike

3350-1133 Reinstatement not barred

3350-1133-1500 Where non-strikers are aggressors

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(involvement in exchange of words and threats with nonstriker not bar to reinstatement and backpay where nonstrikers were agressors and strikers act was in self defense, further, incident too minor to bar reinstatement on backpay where no blows struck, and no damage to property or person)

3350-1133-2500 Misconduct must be such as to render employee unsuitable for further employment

Fort Vancouver Plywood Company **252 NLRB No. 142**

(on remand, original order, reinstating nonshareholder discriminatees affirmed where Respondent had not met its burden of proving that, to the time of present hearing, it would have eliminated jobs of any of discriminatees for other than unlawful reasons)

3350-1133-2550 Balancing of misconduct in light of ULP

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(ULP striker spitting at foreman and using profane language towards superintendent not sufficient misconduct to bar reinstatement, particulary since ULP striker)

3350-1133-6200 Minor misconduct

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(involvement in exchange of words and threats with nonstriker not bar to reinstatement and backpay where nonstrikers were agressors and strikers act was in self defense, further, incident too minor to bar reinstatement on backpay where no blows struck, and no damage to property or person)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(striker following car of non-striker insufficient to bar reinstatement and backpay where no threats made nor was there any attempt to run striker off road and non-striker not followed home)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(striking auto of non-striking Ee with picket sign impulsive trivial incident which did not bar reinstatement)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(striker holding gun not sufficient misconduct to deny reinstatement since non-striker not threatened by gun where he did not report incident to police or attempt to have striker arrested)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(ULP striker spitting at foreman and using profane language towards superintendent not sufficient misconduct to bar reinstatement, particulary since ULP striker)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(ULP striker striking side of non-striking Ee's car as non-striking Ee passing through gate of E's plant)

3350-1500 Violations of other laws

N.L.R.B. v. Mutual Maintenance Service Co., Inc. **632 F.2d 33 (C.A. 7, 1980)**

(although ct affirmed Bd's finding that U adherent was discharged because of his U activities, ct denied portion of Bd order concerning reinstatement of Ee where Ee defrauded federal government and former E of unemployment compensation benefits, notwithstanding that current E was aware and even encouraged this Ee to work for E under alias while collecting unemployment compensation)

3350-2100 Falsification of employment application

Garden State Motors Co. **JD-160-80**

(reinstatement and backpay ordered notwithstanding Ee's concealment of larceny conviction where conviction record was 20 years old and followed by relatively unblemished record; order contained proviso that order would not require reinstatement or backpay if it appeared in compliance stage that Ee was not entitled thereto under Bd precedent)

3350-2500 Solicitation of employer's customers

Vulcan Fuel Corporation **JD-842-79**

(laid off Ee not rendered unfit for reinstatement because Ee won bid for work previously performed by E since Ee was former entrepreneur who correctly believed he was wrongfully laid off and there is no reason to presume Ee took advantage of any confidential information in formulating bid)

3350-5600 Abolition of job

The Shaw College at Detroit, Inc. v. N.L.R.B. **623 F.2d 488 (C.A. 6, 1980)**

(reinstatement of 10 college instructors inappropriate where no anti-U motivation in layoff, college had legitimate financial reason for not renewing contracts, and college had no duty to continue to employ during negotiations)

3350-5900 Employee would have been discharged or laid off for nondiscriminatory reasons

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(discriminatee who was driver not reinstated since E's insurance carrier subsequent to discharge excluded from liability coverage any vehicle driven by discriminatee)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

(dischargee entitled to reinstatement and backpay since discharge motivated by U activity notwithstanding E seriously contemplated discharging Ee for poor sales prior to discovery of U activity or might have later discharged her for low sales)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**

(reinstatement of discriminatority discharged Ee ordered notwithstanding Ee guilty of falsifying time card as E had no knowledge of Ee's action until after discharge and no evidence presented to prove that Ee would have been discharged for this action)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**

(where discriminatee would have been discharged at later time for lawful reasons, backpay tolled as of that time and reinstatement not ordered)

3350-6100 Misconduct constituting cause for discharge

Fort Vancouver Plywood Company **252 NLRB No. 142**

3350-6100—Cont.

(on remand, original order, reinstating nonshareholder discriminatees affirmed where Respondent had not met its burden of proving that, to the time of present hearing, it would have eliminated jobs of any of discriminatees for other than unlawful reasons)

3350-7300 Employee voluntarily quit

A.S.C., a subsidiary of Intermedco **JD-(SF)-161-80**
(backpay and reinstatement awarded to discriminatee who had announced prior to her unlawful discharge her intention to leave in order to seek more renumerative employment, since such motivation presupposes obtaining other employment before leaving E)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

3350-7400 Employee does not wish to return to work for employer

Don Pizzolato, Inc. **249 NLRB No. 136**
(fact that Ee did not wish to return to job does not relieve E of obligation to make valid offer of reinstatement)

3350-7600 Employee was searching for other employment prior to discharge

A.S.C., a subsidiary of Intermedco **JD-(SF)-161-80**
(backpay and reinstatement awarded to discriminatee who had announced prior to her unlawful discharge her intention to leave in order to seek more renumerative employment, since such motivation presupposes obtaining other employment before leaving E)

3350-8100 Employee has regular and substantialy equivalent employment elsewhere

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(fact discriminatee who was ULP striker was fully employed during strike does not bar backpay where his earnings were substantially lower than he was making at E and he was not obligated to search for better employment nor does fact accepted interim employment indicate he was no longer interested in employment with E)

3383 SPECIAL TYPES OF REINSATEMENT ORDERS

3383-0900 Conditional orders

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(E's request that language in ALJ's recommended order be modified by conditioning the order of reinstatement with phrase *to the extent it has not done so,* denied, since issue of whether E in fact made unconditional offer of reinstatement had not yet been resolved)

3383-0936 Conditioned on resumption of operations

Routh Packing Company, Inc. **247 NLRB No. 053**
(E to hire economic strikers on preferential basis if E or successor resumes operations)

ABC Trans-National Transport, Inc. **247 NLRB No. 025**

3383-0990 Reinstate economic strikers upon application or as vacancies arise thereafter

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(E's failure to offer position to former economic striker, unlawful, where E filled position with nonstriker after unconditional offer to return to work made on behalf of strikers)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct held proper Bd order of reinstatement and back pay from date of unlawful discharge for Ee until offered reinstatement by E as consistent with remedial policies of Act)

3383-1800 Identity of persons and entitlement to reinstatement to be determined at compliance stage

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(Ees of *alter ego* of E)

3383-3600 Reinstatement on basis of seniority

Motor Freight Express, Inc. **JD-531-80**
(remove discriminatee's name from *Do-not-use* list and reinstate him to hiring pool of casual dock workers; employment as full time Ee not proper where speculation involved as to whether he would have been hired as full-time Ee)

3383-6300 Preferential hiring

Central Transport, Inc. **247 NLRB No. 198**
(remedy modified to include E establishing preferential hiring list and placing discriminatee's name at top of list)

Routh Packing Company, Inc. **247 NLRB No. 053**
(E to hire economic strikers on preferential basis if E or successor resumes operations)

3383-8500 Make employees whole for loss suffered due to delay in reinstatement

Cable Vision, Inc. **249 NLRB No. 062**
(ULP strikers were not reinstated w/i 5 days from date of unconditional application for reinstatement)

3900 PERSONS ENTITLED TO BACKPAY

Sachs Electric Company **248 NLRB No. 092**
(determination of how many and which of a number of discriminatees were laid off by E or quit because of U's unlawful, request that they do so and suffered loss of earnings as result held appropriate matter for compliance stage of proceeding)

Alfred M. Lewis, Inc. **250 NLRB No. 183**
(Bd held that Ee's discharge was *solely* result of E's unlawful production quotas and disciplinary system and that dischargee was therefore entitled to reinstatement and backpay in accordance with court decision)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**
(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See, *Fibreboard,* 379 US 203)

3901 GENERALLY

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices may not render jurisdictional decisions, and then overrule them *retroactively* and thereby transform E's interim behavior, legal when pursued, into illegal ULPs; E's conduct after formal declaration by Bd that he is not covered by Act and before re-examination of that issue, cannot subsequently be branded ULP subjecting E to liability for back-pay)

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

3912 PROBATIONARY EMPLOYEE

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(at time of strike)

3925 UNSPECIFIED BUT SIMILARLY SITUATED DISCRIMINATEES

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(inclusion in make-whole order of all nonmember applicants for job referral as well as individual charging parties, proper where amended charge and consolidated complaint alleged that Ees who were not members of U and applicants for employment who were not members suffered discrimination, so that U was put on notice as to who were alleged to be discriminatees; further, nature of evidence adduced at hearing put U on notice of allegation that its referral system inherently favored members over nonmembers)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 006**
(non-member discriminatee of local's unlawful hiring hall preferential policy limited to backpay period to when he filed his separate charge because GC expressly limited relief requested for him and it would be inequitable to place discriminatee in class of unnamed beneficiaries of ULP order whose cut-off date for backpay would be six months before initial charges were filed)

3937 LIMITED TO EMPLOYEES WHOSE STATUS WAS LITIGATED AT HEARING

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(backpay limited to Ees found discriminated against at hearing where no general pattern of discrimination by U in operation of referral system existed)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**

3937—Cont.

(U to make whole all Ees as to whom there was evidence of loss of benefits due to U's unlawful policy, but not to include Ees who were not named in complaint and whose status was not litigated at hearing, since that would be contrary to Bd precedent and would enable GC to engage in unwarranted fishing expedition at compliance stage of proceeding)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 006**
(non-member discriminatee of local's unlawful hiring hall preferential policy limited to backpay period to when he filed his separate charge because GC expressly limited relief requested for him and it would be inequitable to place discriminatee in class of unnamed beneficiaries of ULP order whose cut-off date for backpay would be six months before initial charges were filed)

3985 PERSONS DISCRIMINATORILY DENIED EMPLOYMENT

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(discriminatee entitled to backpay from date he would have stated work at E had E not unlawfully withdrawn offer of position notwithstanding E may be overstaffed since at time of acceptance of job offer there was vacancy)

3989 STRIKERS

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(provisions for reinstatement and make whole relief for strikers appropriate where economic strike was converted into ULP strike)

B. N. Beard Company **248 NLRB No. 016**
(ULP strikers unlawfully discharged as of time they went out on strike held entitled to backpay from date of discharge to date they are offered reinstatement, rather than from date they request reinstatement to date E offers them reinstatement)

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(unlawfully discharged strikers should receive back pay from dates their discharge letters were issued to date upon which they were reinstated)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(where strike not ULP strike, ct will not enforce Bd's order of reinstatement and backpay; record was devoid of evidence that impasse over nonmandatory subject (presence of stenographers at negotiating sessions) contributed to U's decision to strike)

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(E's refusal to reinstate certain Ees and its discharge of others for strike misconduct cannot support back-pay order in instant case since there was no ULP strike)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

3989-5000 Resigned as precondition to accepting new employment

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(resignation by ULP striker in order to accept other jobs during strike does not automatically eliminate striker as striking Ee absent unequivocal evidence of intent to permanently sever employment relationship; i.e., if new E required resignations to be submitted, such submission did not constitute unequivocal abandonment of employment)

3999 OTHERS

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(regular part-time Ees included in bargaining unit and eligible for remedial benefits)

Hedison Manufacturing Company **249 NLRB No. 096**
(laid off Ees held entitled to reinstatement and backpay w/o regard to any effect layoff might have had on them if parties had bargained in good faith about layoff; while Ees were laid off because of lack of work in their department, it was their refusal to accept unlawfully imposed restrictions on their transfers to other departments, and their acceptance of layoff instead, which ultimately caused their loss of employment plantwide, not merely their loss of employment in their department)

4400 BACKPAY ORDERS

4401 GENERALLY

Babcock & Wilcox Co. **249 NLRB No. 099**
(where unlawfully discharged U president was permitted to retire voluntarily on disability, normal backpay and reinstatement order held not applicable, and since discharge probably made him ineligible to hold or retain U office, E ordered to correct its records, deleting any reference to *discharge* and simply substituting therefor, the term *retirement* or *retirement on disability, accompanied by notification to U of such action*)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(ct enforced Bd's backpay order to all Ees at unlawfully closed plant involving two units each represented by different U, notwithstanding that E negotiated agreement as to effects of closing with one U; remedial order was not improper because closing harmed all Ees and agreement with one U regarding severance pay would not remedy 8(a)(3) violation, and remedial orders directed to non-parties are appropriate if fairly encompassed in C and adequately proved at hearing)

N.L.R.B. v. Columbia Building Materials, Inc. **624 F.2d 193(T) (C.A. 9, 1980)**
(Bd's task is to fashion remedy for ULPs that will restore economic status quo that would have existed but for ULP; backpay order herein w/i remedial authority of Bd since it does no more than return affected Ees to economic state which they would have enjoyed absent unilateral wage change)

4410 LIMITED BACKPAY ORDER

National Car Rental System, Inc. **252 NLRB No. 027**
(*limited backpay* requirement accompanied bargaining order requiring E to bargain with U w/i 5 days of decision concerning effects of its closing facility as result of sale and relocation; back pay order designed to make whole Ees for losses, if any, suffered as result of violation and to recreate in some practicable manner situation in which U's bargaining position is not entirely devoid of economic consequences for E)

4412 SUCCESSORS

Winco Petroleum and Cooper Oil Company, Inc., Successor Employer **252 NLRB No. 150**
(successor E required to pay stipulated amount of backpay due backpay claimants who were Ees of E's predecessor, where E had purchased predecessor's business with actual knowledge of E's unremedied ULPs)

4417 JOINT BACKPAY LIABILITY

4417-2500 Predecessor and successor employers

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

4417-4200 Firms found to be single employer

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**
(parent corporation and subsidiaries held liable notwithstanding violation committed by 1 subsidiary where *single enterprise* test met)

4417-8400 Employer and union

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(E's backpay liability would not be altered if Bd were to find that U's general refusal to refer Ees was independent violation of Act, since U would be held solely liable for illegal refusal to refer; however, E would be secondarily liable for its ultimate acquiescence in U's demand to discharge direct hires; such liability is unaffected by separate issue of alleged unlawful refusal to refer individuals for employment)

Schorr Stern Food Corp. **248 NLRB No. 050**
(under circumstances herein, E held liable for entire backpay award rather than having damages apportioned between E and U)

4417-8425 Jointly and severally liable

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

4417-8475 Union primarily, employer secondarily, liable

Exxon Company, U.S.A. **253 NLRB No. 027**
(where U alone administers health plan, U primarily liable to make whole any present or former nonU unit members or their estates who may have

4417-8475—Cont.

suffered reduced insurance coverage or increased insurance costs by U's charging nonU Ees service fee as condition to continue in contractually established U medical plan)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

4433 COMPUTATION OF AMOUNT OF BACKPAY

4433-0100 Generally

Ace Beverage Co. **250 NLRB No. 066**
(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

Ace Beverage Co. **250 NLRB No. 066**
(GC's backpay formula rejected, since it did not comport with Bd's order entitling Charging Party (CP) to backpay he would have earned as supervisor from date he was unlawfully demoted to salesman until reinstated or offered reinstatement to former position; strike settlement agreement on which GC premised formula, claiming that agreement waived CP's right to recall to his salesman's position which he held at time of strike, is unrelated to violation found, and irrelevant to his backpay rights; consequently, agreement neither mitigated nor extinguished E's backpay liability)

Ace Beverage Co. **250 NLRB No. 066**
(in finding GC's backpay formula defective since not comporting with Bd's order entitling Charging Party (CP) to backpay he would have earned as supervisor from date he was unlawfully demoted to salesman until reinstated or offered reinstatement to former position, Bd rejected contention that CP's participation in strike as salesman was intervening event which made strike settlement agreement, waiving salesmen's right to recall, applicable to him; since E's wrongdoing placed CP in circumstances herein, he must bear burden of making CP whole w/o reliance on agreement)

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

4433-0700 Partial backpay

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd ordered his participation in strike, regardless of status, constituting withholding of services from E, be taken into account in backpay computation)

4433-1400 Method of determining what employee would have earned

4433-1410 Employee's earnings prior to discrimination

Highview, Inc. **250 NLRB No. 090**
(appropriate measure of hours worked is average of each calendar quarter of entire last period of employment before discriminatory discharge where Ee had long absence due to illness in last calendar quarter preceeding discharge)

Abrahamson Chrysler-Plymouth, Inc. **JD-65-80**
(because of seasonality factors in automobile sales, representative period for determining amount of backpay due salesman was average weekly earnings over prior two full calendar years before discharge rather than just average weekly earnings for 9 week period that Ee worked in calendar year of his discharge)

4433-1420 Earnings of comparable employee during backpay period

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(discriminatee and another Ee comparable where both employed in same classification, paid same wage rate, Ee first laborer hired after discriminatee so seniority almost identical)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(average of weekly hours Ee worked prior to discharge plus amount of wage increase granted to two comparable Ees)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(determination of Ee's gross earnings during backpay period made by using average wages of E's Ee U members from date of unlawful refusal to hire as it takes into account probability of earnings of one who would have been hired on date of Ee's unlawful refusal to hire)

4433-1440 Employee's rate of absenteeism prior to discrimination to be considered

4433-1440-5000 Except when due to specific illness

Highview, Inc. **250 NLRB No. 090**
(appropriate measure of hours worked is average of each calendar quarter of entire last period of employment before discriminatory discharge where Ee had long absence due to illness in last calendar quarter preceeding discharge)

4433-1470 Terms and conditions of employment in unlawfully terminated or expired contract

L.B. Priester & Son, Inc. **252 NLRB No. 034**
(E was free to hire Ees at any skill level but obligated under contract to pay all but apprentices journeymen rates)

Acme Wire Works, Inc. **251 NLRB No. 209**

4433-1480 Pay raise which employee would have received absent discrimination

Eastern Maine Medical Center **253 NLRB No. 024**
(to remedy discriminatorily withheld wage increases, E ordered to reimburse affected Ees for increases they would have received from date of withholding of increases to present by paying them difference between their actual wages and wages they would have received had increases originally been granted them)

Eastern Maine Medical Center **253 NLRB No. 024**
(while wage increase, received by Ees some substantial period of time after increase had been discriminatorily withheld from them, might have tolled some backpay liability, resolution of such issue left to compliance stage)

Service Garage, Inc. **247 NLRB No. 115**

4433-2800 Gross backpay

4433-2833 Items included

4433-2833-4500 Retirement fund payments

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(Ee's pension benefit credit reinstated retroactively and U, because of its 8(b)(1)(A) conduct, ordered to pay pension fund amount necessary to vest Ee with pension credit for hours worked during backpay period)

4433-2833-5500 Wage increase

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(amount of wage increase based on total increase given to two comparable Ees rather than 71 percent of average wage increases received by discriminatee compared to two comparable Ees while he worked)

4433-2833-6300 Medical expenses

Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO (Southern Illinois Builders Association) **252 NLRB No. 108**
(remand to RD for purpose of ascertaining whether discriminatee incurred medical expenses for which he is entitled to recover under E's health and welfare plan; Bd rejected discriminatee's plan that medical claims be submitted directly to carrier for determination of coverage)

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(Ee reimbursed for losses and expenses caused by U's unlawful 8(b)(1)(A) conduct against him by requiring U reimburse Ee for lost health insurance benefit coverage applicable to unreimbursed medical expenses incurred and his personal premium expenses incurred in securing for himself essentially comparable insurance)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(out of pocket medical expenses incurred when E was not covered by insurance at his interim employment, less savings in cost of insurance, included; notwithstanding contention striker could have insured himself)

4433-2833-8600 Additional insurance permiums paid by discriminatee

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(Ee reimbursed for losses and expenses caused by U's unlawful 8(b)(1)(A) conduct against him by requiring U reimburse Ee for lost health insurance benefit coverage applicable to unreimbursed medical expenses incurred and

4433-2833-8600—Cont.

his personal premium expenses incurred in securing for himself essentially comparable insurance)

4433-2833-9600 Contributions to pension plan

Acme Wire Works, Inc. **251 NLRB No. 209**
(to be paid directly to discriminatee since he has been out of industry for 24-month period and thus entitled to withdraw his monies from fund under agreement)

Acme Wire Works, Inc. **251 NLRB No. 209**
(E must contribute full amount discriminatee entitled to notwithstanding lower amount would maintain vesting right[illegible]his would result in windfall to E and deprive pension fund of its full en[illegible]ent)

4433-2867 Items excluded

Eastgate I.G.A. Foodliner **253 NLRB No. 106**
(Bd held E's backpay liability would continue past date when discriminatee became permanent part-time Ee at market he had been *moonlighting* from regular employment and earnings from such part-time employment constituted alternate earnings not to be deducted from E's gross backpay liability as interim earnings)

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(amount reimbursed E's *skidder* operators for expenses incurred as owners and operators of *skidder* machine, excluded, since concept of reimbursement for skidder ownership and operation was based on compensation for expenses rather than allowance for profit to skidder owner)

4433-4200 Deductions from gross backpay

4433-4209 Recoupment of backpay

Plasticrafts, Inc. **248 NLRB No. 161**
(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

4433-4217 Interim earnings

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required that his earnings as salesman for period between demotion and striking be entertained as offset against gross backpay owing him as supervisor during such period)

4433-4217-2500 Items included

4433-4217-2510 Earnings from self-employment

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(where discriminatee and wife also operated restaurant and filling station, fifty percent of earnings stated in IRS return)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(earnings placed in escrow account held reportable in year earned rather than in year released from escrow and reported to IRS)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(sales tax paid in year following collection held deductible in year paid where included on IRS return for year paid)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(self-employment should be treated like any other interim employment in measuring backpay liability)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(moneys earned during period of discrimination from a supplemental job which discriminatee also held during his employment with respondent/E are not deductible from gross backpay as interim earnings)

4433-4217-2545 Wages paid in equivalency for fringe benefits

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(wages paid to Ee in equivalency for fringe benefits on government funded jobs, if established as paid to Ee, would properly qualify as offsets to mitigate U's insurance expenses; and also available to offset pension benefits)

4433-4217-2590 Workmen's compensation award included to extent it is payment for lost wages

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(workmen's compensation award should be considered as interim earnings offset from backpay only so long as award is forthcoming so as to be used in backpay determinations and will not delay compliance beyond period of 30 days after ALJ's order; if not w/i 30 day period, issue of such contended interim earnings should be foreclosed)

4433-4217-5000 Items excluded

4433-4217-5012 Strike benefits

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

Robert E. Anderson and Richard E. Anderson, Co-Partners d/b/a Anderson Cabinets **JD-316-80**

4433-4217-5050 Collateral benefits

Ace Masonry, Inc. **252 NLRB No. 022**
(*collateral* losses not part of additional amounts to be determined at compliance stage)

4433-4217-5075 Earnings during hours when discriminatee would not have worked for employer

Eastgate I.G.A. Foodliner **253 NLRB No. 106**
(Bd held E's backpay liability would continue past date when discriminatee became permanent part-time Ee at market he had been *moonlighting* from regular employment and earnings from such part-time employment constituted alternate earnings not to be deducted from E's gross backpay liability as interim earnings)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(moonlighting earnings)

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(money discriminatees earned during mud season when E's logging operation was shut down and no backpay accrued, not deducted from backpay which accumulated while E was operating)

4433-4217-7500 Deductions

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(discriminatee entitled to reimbursement for tools left at E's, notwithstanding discriminatee never personally went to E's to claim tools, absent offer by E to return tools or evidence tools still intact because if not for E's ULPs, Ee would not have been forced to purchase new tools)

4433-4217-7508 Tools and equipment used for interim employment

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(where business occupied one floor and half of basement and family occupied one floor and half of basement, fifty percent of rent is deductible)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(total phone bill less amount of average personal phone bill before Ee commenced business held deductible where extension of business phone is installed in Ee's apartment)

4433-4217-7510 Travel expenses incurred in seeking interim employment

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(gasoline costs incurred while job hunting)

Plumbers Local Union No. 83 (Power City Plumbing & Heating Inc.) **JD-38-80**
(15 cents rather than 10 cents per mile, held appropriate reimbursement rate for Ee's travel expenses in seeking job; 10-cent per mile figure is unreasonable in light of general inflation rate since 1964 when it was introduced as Federal Government's reimbursement rate and today's spiralling costs for operating motor vehicles)

4433-4217-7520 Travel expenses incurred in going to and from interim job

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(amounts expended for lease of tank truck and permit, although illegal to use lease of another under state law, and estimated milage from IRS return held deductible)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

4433-4217-7540 Room and board for interim employment out of town

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(discriminatee who was transferred out of state during his interim employment not entitled to additional compensation for meals during period out of state since he would have had to spend same amoutnt had he been w/i state working for same E)

4433-4217-7575 Training expenses

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(expenses for travelling to attend *Success Motivation Institute* meeting)

4433-4233 Willful loss of earnings

4433-4233-0400 Failure to seek or accept interim employment

Highview, Inc. **250 NLRB No. 090**

4433-4233-0400—Cont.

(test of whether discriminatee has made reasonable search for employment is whether he/she had dilligently sought other employment during entire backpay period, and fact that discriminatee had no interim earnings during backpay period is not probative upon issue of whether discriminatee made diligent search for work)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(no willful loss of earnings since job at different E never actually offered him where striker stated he intended to return to E's employ when strike ended)

Melones Contractors, A Joint Venture **JD-(SF)-281-80**
(not established where discriminatee sought employment both in and outside geographical area of his former employment and acted reasonably in seeking work at the different locations)

DeLorean Cadillac, Inc. v. N.L.R.B. **614 F.2d 554 (C.A. 6) (1980)**
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

4433-4233-0900 Self-employment

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(self-employment is not tantamount to withdrawal from job market)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(no willful loss of earnings where discriminatee operated business for about six months but ceased operation when it proved to be unprofitable)

4433-4233-1300 Failure to retain interim employment

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(Ee did not engage in willful loss of earnings during backpay period where he left interim employment because he was not receiving benefit of having health, welfare, and pension contributions made to U funds and wanted to work where such would be done)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(discriminatee not barred from further claims for backpay where he quit interim employment which involved long commute)

4433-4233-1600 Acceptance of lower paying job

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(fact discriminatee who was ULP striker was fully employed during strike does not bar backpay where his earnings were substantially lower than he was making at E and he was not obligated to search for better employment nor does fact accepted interim employment indicate he was no longer interested in employment with E)

4433-4233-1800 Registration with USES or state employment office

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(Ee who attends trade school classes but registers with state unemployment services and continues job search not rendered unavailable for work by virtue of school attendance)

4433-4233-4500 Removal from labor mrket

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(Ee who attends trade school classes but registers with state unemployment services and continues job search not rendered unavailable for work by virtue of school attendance)

4433-4233-4525 Leaving geographical area of former employment

M Restaurants, Incorporated d/b/a The Mandarin v. N.L.R.B. **621 F.2d 336 (C.A. 9, 1980)**
(unlawfully discharged Ee who was unable to find work for 18 months and then left country for 1 year period during which time he earned minimal salary found not to have voluntarily left labor market; *discharged Ee is not confined to the geographical area of former employment; he or she remains in the labor market by seeking work in any area with comparable employment opportunities*)

4433-4233-7600 Accepting less than regular interim employment salary

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(fact discriminatee who was ULP striker was fully employed during strike does not bar backpay where his earnings were substantially lower than he was making at E and he was not obligated to search for better employment nor does fact accepted interim employment indicate he was no longer interested in employment with E)

4433-4250 Severance payments

W. R. Grace & Co., Construction Products Division **247 NLRB No. 094**
(ALJ's proration of severance pay over weeks remaining in quarter after layoffs, and deduction of prorated amount from backpay liability, proper where record did not establish in what week of the quarter severance pay was normally paid)

4433-4267 Premiums for insurance or medical coverage which discriminatee would have paid absent discrimination

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(out of pocket medical expenses incurred when E was not covered by insurance at his interim employment, less savings in cost of insurance, included; notwithstanding contention striker could have insured himself)

4433-4283 No deduction for periods when employee would not have worked for employer

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(money discriminatees earned during mud season when E's logging operation was shut down and no backpay accrued, not deducted from backpay which accumulated while E was operating)

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

4433-5600 Interest

W. R. Grace & Co., Construction Products Division **249 NLRB No. 094A**
(where Bd's D/O, as enforced by ct, does not include interest award, Bd, in exercise of its discretion and depending on circumstances, has awarded interest either from ALJ's supplemental decision adjudicating total net backpay obligation or from commencement of some earlier period; accordingly, upon reconsideration and finding no circumstances which warranted limiting award of interest to period following ALJ's supplemental decision, Bd found it appropriate to award interest on net backpay obligation from commencement of backpay period)

4433-5633 Computed at Internal Revenue service's 'adjusted prime rate'

Olympic Medical Corporation **250 NLRB No. 011**
(use of automatically adjusting *adjusted prime rate* for determining interest rate as established in *Florida Steel Corp.*, 231 NLRB 651, reaffirmed over fixed rate formula; automatically adjusting rate is preferable because of its link with interest rates of private industry and therefor provides a fairer method for setting interest rate on backpay and other monetary remedies)

4433-7000 Woolworth formula

Melones Contractors, A Joint Venture **JD-(SF)-281-80**
(Woolworth formula used notwithstanding E's contention that, because during quarters 1 and 4 of certain year Ee earned more money than he would have earned had he worked at E, Ee's excess earnings must be carried forward to quarters 1 and 2 of the following year so as to avoid windfall for Ee and improper punitive measure as to E)

4450 BACKPAY PERIOD

4450-0100 Generally

Eastgate I.G.A. Foodliner **253 NLRB No. 106**
(Bd resolves uncertainties in record regarding deductions from gross backpay figure against E; backpay claimant rather than wrongdoer receives benefit of any doubt regarding such deductions)

4450-2500 Beginning of period

4450-2503 10(b) period cut off

4450-2503-5000 Effect of Board's prior order

Pease Company **251 NLRB No. 080**
(where issue of backpay for ULP strikers was, in substance, question concerning compliance with Bd's order in prior case against E, Bd held limitations of Sec. 10(b), applicable to charges in present proceeding, inapplicable to strikers' backpay award, beginning of which is controlled by Bd's prior order; accordingly, strikers are entitled to backpay, not from 6 months prior to filing of charge in instant proceeding, but beginning 5 days after E's receipt of U's unconditional reinstatement application to such time as they are offered reinstatement)

4450-2507 Date of discriminatory action

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(where E unlawfully failed to bargain with U over partial terminations of operations and later closed all operations, backpay period extends from times Ees terminated notwithstanding on strike at that time to date of termination of all operations)

Newspaper Printing Corporation **250 NLRB No. 132**
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

Trojan Transportation, Inc. **249 NLRB No. 084**
(period for computation of backpay and seniority commenced from date of unlawful discharges, notwithstanding E's contention that period should have commenced from date discriminatees' replacements were added to work force, since discriminatees were not recalled but were unlawfully discharged; however, E permitted to attempt to mitigate its backpay liability by showing in compliance proceedings that discriminatees would have been laid off for economic reasons at some time after date of discharges, had Ees not been unlawfully discharged)

Andersen Sand & Gravel Company **JD-655-80**
(backpay runs from date of ULP strikers' discharges rather than from their unconditional offer to return to work, since Bd no longer requires such offer to start running of backpay period)

4450-2507-2500 Unlawful discharge of striker

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

Carbonex Coal Company **248 NLRB No. 107**

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(unlawfully discharged strikers should receive back pay from dates their discharge letters were issued to date upon which they were reinstated)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

4450-2507-5000 Mitigatory circumstances

Wonder Markets, Inc. **249 NLRB No. 042**
(in light of Bd finding that E's offer to Ee of another job was not substantially equivalent to his former position, discriminatee cannot be put under obligation to accept such job to toll or mitigate lost wages and thereby reduce E's backpay obligation)

4450-2514 Date work became available for discriminatee

4450-2514-5000 Seasonal work

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

4450-2542 Five days after ULP strikers' unconditional application for reinstatement

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(backpay liability commences as of date of unconditional offer to return to work where E rejects, unduly delays, or ignores any unconditional offer to return to work, or attaches unlawful conditions to its offer, since customary 5 day waiting period for liability to attach would serve no useful purpose in regard to accommodating Ees' interest in returning to work as quickly as possible and E's need to effectuate such return in orderly manner)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

4450-2577 Date discriminatee requests reinstatement after abandoning strike

Routh Packing Company, Inc. **247 NLRB No. 053**
(backpay awarded all strikers not permanently replaced as soon after their unconditional offer to return to work as their individual positions were open)

4450-5000 End of period

4450-5001 Generally

The Leavenworth Times, A Division of Thomson Newspapers, Inc. **JD-(SF)-308-79**
(where Ees lost money each week for three years following unlawful failure to provide merit increase, E's obligation to backpay not cut off by subsequent bargaining agreement between E and U, notwithstanding that the agreement provided salary for Ees; backpay case was excluded from the collective-bargaining)

4450-5006 Valid offer of reinstatement

Reeves Rubber, Inc. **252 NLRB No. 026**
(backpay liability not tolled, since E's one-time telephone calls to Ee w/o reaching him did not constitute bona-fide effort to recall, especially where E failed to contact person whose name Ee had given as a reference, send Ee a letter or contact his U)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(offer of reinstatement communicated to discriminatee's roommate not valid offer)

General Meats, Inc. **247 NLRB No. 153**
(where Bd and ct ordered reinstatement of 3 discriminatees and Ees were rehired as helpers rather than drivers and subsequently quit, Ees found constructively discharged and additional backpay ordered from cutoff date of original backpay specification)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct held proper Bd order of reinstatement and back pay from date of unlawful discharge for Ee until offered reinstatement by E as consistent with remedial policies of Act)

4450-5006-2500 Offer of reinstatement to some discriminatees tolls backpay as to those offered reinstatement

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer to return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

4450-5006-5000 Offer of reinstatement to some ULP strikers tolls backpay as to those offered reinstatement

Lucy's, Inc. **JD-832-79**

4450-5042 Date discriminatee obtains substantially equivalent employment elsewhere

Eastgate I.G.A. Foodliner **253 NLRB No. 106**

W. R. Grace & Co., Construction Products Division **247 NLRB No. 094**
(E's backpay liability under *Transmarine* remedy not affected by Ee's obtaining substantially equivalent work after U's failure to bargain in good faith had already terminated E's backpay liability)

4450-5045 Date discriminatee abandoned employment

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(resignation by ULP striker in order to accept other jobs during strike does not automatically eliminate striker as striking Ee absent unequivocal evidence of intent to permanently sever employment relationship; i.e., if new E required resignations to be submitted, such submission did not constitute unequivocal abandonment of employment)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(constructive discharge does not constitute willful loss of earnings)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(self-employment is not tantamount to withdrawal from job market)

4450-5048 Date of misconduct barring reinstatement

High Performance Tube, Inc. **251 NLRB No. 181**
(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying lest of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

4450-5054 Date of conviction for crime

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(conviction and imprisonment of unlawfully discharged Ee would require disqualification of Ee from reinstatement and backpay beyond date of conviction)

4450-5060 Date discriminatee would have been terminated or laid off for non- discriminatory reasons

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(where discriminatee would have been discharged at later time for lawful reasons, backpay tolled as of that time and reinstatement not ordered)

4450-5072 Date discriminatees resigned

N.L.R.B. v. Mars Sales & Equipment Co. 626 F.2d 567 (C.A. 7, 1980)
(ordering reinstatement and backpay for Ee following his resignation would subject E to award of back pay for not making futile gesture of offer of reinstatement to one who prior to his discharge voluntarily withheld his work product and after discharge indicated he no longer wanted employment with E; thus, burden must be placed on Ee to indicate he desires reinstatement)

4450-5084 Date employer ceased operations

Brockway Motor Trucks, Division of Mack Trucks, Inc. 251 NLRB No. 023
(where E unlawfully failed to bargain with U over partial terminations of operations and later closed all operations, backpay period extends from times Ees terminated notwithstanding on strike at that time to date of termination of all operations)

4450-5090 End of period in 8(a)(5) case

Newspaper Printing Corporation 250 NLRB No. 132
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

4450-5090-0100 Generally

Hillcrest Furniture Manufacturing Co., Inc. 253 NLRB No. 009

4450-5090-1700 Agreement reached on mandatory subjects of bargaining

Ferro Mechanical Corp. 249 NLRB No. 083
(where there has been unlatual termination of operations w/o bargaining)

4450-5090-3300 Impasse reached on mandatory subjects of bargaining

Ferro Mechanical Corp. 249 NLRB No. 083
(where there has been unilateral termination of operations w/o bargaining)

4450-5090-5000 Failure of union to request bargaining within 5 days after receiving notice of employer's desire to bargain

Ferro Mechanical Corp. 249 NLRB No. 083
(where there has been unilateral termination of operations w/o bargaining)

4450-5090-6700 Failure of union to bargain in good faith

W. R. Grace & Co., Construction Products Division 247 NLRB No. 094
(U terminated E's backpay liability by its failure to bargain, neither revealing Ees' rejection of E's repeated offer nor making counterproposals)

W. R. Grace & Co., Construction Products Division 247 NLRB No. 094
(E's backpay liability under *Transmarine* remedy not affected by Ee's obtaining substantially equivalent work after U's failure to bargain in good faith had already terminated E's backpay liability)

4450-7500 Tolling of backpay

4450-7501 Generally

Port Jefferson Nursing Home and Health Related Facility 251 NLRB No. 092
(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

4450-7501-3300 8(a)(3) cases

Wonder Markets, Inc. 249 NLRB No. 042
(in light of Bd finding that E's offer to Ee of another job was not substantially equivalent to his former position, discriminatee cannot be put under obligation to accept such job to toll or mitigate lost wages and thereby reduce E's backpay obligation)

4450-7540 Unavailability of work

Everspray Enterprises, Inc. 253 NLRB No. 127
(Bd rejected E's contention that it was improper to base gross backpay figures on E's gross receipts during backpay periods since this work allegedly would not have been available to discriminatees, had they been reinstated, because of picketing and other U activities during period, where, upon remand to take additional evidence, E failed to prove that work performed by E or its contractors would not have been available to discriminatees had they been offered reinstatement to their former positions)

4450-7560 Unavailability of discriminatee for work

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028
(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer to return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

4450-7560-7000 Discriminatee-student returns to school

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 054
(full time college student not entitled to backpay for period of school term)

4450-7575 Rejection of valid offer of reinstatement

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028
(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer to return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

Flatiron Paving Company d/b/a Flatiron Materials Company 250 NLRB No. 080
(liability for back pay not tolled by *invalid* offer of reinstatement)

Newspaper Printing Corporation JD-203-80
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

4467 AFFIRMATIVE DEFENSES

4467-0100 Generally

DeLorean Cadillac, Inc. v. N.L.R.B. 614 F.2d 554 (C.A. 6) (1980)
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

4467-2300 Conduct constituting cause for discharge

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(in determining whether strike misconduct bars backpay fact strike was ULP strike and E's ULPs taken into consideration)

Montefiore Hospital and Medical Center v. N.L.R.B 621 F.2d 510 (C.A. 2, 1980)
(discharged doctors who had struck w/o notice in sympathy with health care institution Ees denied backpay for period of discharge by ct which held their picket-line statements improper and, unlike their sympathy strike, unprotected)

4467-2500 Participation in strike misconduct

C-F Air Freight, Inc. 247 NLRB No. 060
(defense to order requiring reinstatement and backpay based on assertion that order was *unfair* and unjustified and that participation of Ees in strike herein, which was basis for other ULP cases brought against U and were subject of settlement agreements, was tantamount to Ees' ratification of U's alleged misconduct which they had not disclaimed responsibility for or knowledge of, rejected)

4467-7700 Employee would have been discharged or laid off for nondiscriminatory reasons

High Performance Tube, Inc. 251 NLRB No. 181
(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying lest of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers 614 F.2d 134 (C.A. 7) (1980)
(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

4467-9100 Rejection of reinstatement offer

Newspaper Printing Corporation JD-203-80
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

5500 REIMBURSEMENT ORDERS

5514 DUES, INITIATION FEES, AND ASSESSMENTS

Rosa M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 064
(E to reimburse Ees for dues collected pursuant to unlawful checkoff to extent not already reimbursed)

Stroehmann Brothers Company 252 NLRB No. 139
(remedy to include reimbursement of Ees for any dues and initiation fees deducted from their wages and remitted to U unlawfully recognized by E)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. 251 NLRB No. 030

5514—Cont.

(male Ees, to whom contract with U security clause was unlawfully applied to be reimbursed for initiation fees and dues paid pursuant to contract)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member of multi-E association ordered to pay U any loss of dues suffered as result E-member's unlawful refusal to sign and abide by multi-E contract containing valid U dues-checkoff provision)

Mountaineer Shaft and Tunnel Construction Company **624 F.2d 050 (C.A. 6, 1980)**
(ct held Bd w/o authority to order reimbursement of initiation fees and dues checked off, where Ees had *voluntarily* signed authorization cards which permitted checkoff, notwithstanding E unlawfully recognized U and locked out Ees to force them to ratify contract and affirm U as their bargaining agent)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**
(as violation for collecting assessment only technical in nature and U could still go against members who paid assessment but now request reimbursement, or pass proper assessment against members, Bd order, by placing heavy burden on U for locating and reimbursing all members who paid said assessment, held punitive and not appropriate)

5548 MEDICAL EXPENSES

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(Bd ordered make whole remedy to include reimbursing Ees for any medical, dental, or other expenses ensuing from E's unlawful failure to make such contributions; furthermore, E ordered to reimburse Ees for any contributions Ees themselves may have made for maintenance of contractual health and welfare, pension, industry and apprenticeship funds after E unlawfully discontinued contributions)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(for any medical or dental bills Ees have paid directly to health care providers that contract would have covered, as well as any premiums Ees have paid to insurance companies to continue medical and dental coverage in absence of E's required contributions)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(E to reinburse Ees for medical and dental bills which contractual policies would have covered as well as premiums Ees may have paid to third-party insurance companies to continue coverage)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E who unlawfully failed to make insurance payments ordered to reimburse Ees for payments Ees may have made to third party carriers)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(out of pocket medical expenses incurred when E was not covered by insurance at his interim employment, less savings in cost of insurance, included; notwithstanding contention striker could have insured himself)

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **248 NLRB No. 040**
(Bd ordered E to make whole any Ee who lost money as result of unlawful unilateral change in organizations administering health care insurance plans)

The Saloon, Inc. **247 NLRB No. 156**
(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

5550 CONTRIBUTIONS TO WELFARE, PENSION AND OTHER FUNDS

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(Bd ordered make whole remedy to include reimbursing Ees for any medical, dental, or other expenses ensuing from E's unlawful failure to make such contributions; furthermore, E ordered to reimburse Ees for any contributions Ees themselves may have made for maintenance of contractual health and welfare, pension, industry and apprenticeship funds after E unlawfully discontinued contributions)

Pullman Building Company **251 NLRB No. 145**
(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**

Dial Tuxedos, Inc. **250 NLRB No. 064**
(question of whether E must pay any additional amounts into benefit funds in order to satisfy Bd's *make whole* remedy left to compliance stage of instant case, since provisions of Ee benefit fund agreements were variable and complex)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(whether E must pay additional amounts into benefit funds in order to satisfy make whole remedy left to compliance stage)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Argano Electric Corp. **248 NLRB No. 049**
(payable to funds of U with which E had current contract but with whom E chose not to continue recognition and honor contract)

Schorr Stern Food Corp. **248 NLRB No. 050**
(remedial order which provides literally only for reimbursement to discriminatees for lost welfare or pension benefits, does not preclude order in subsequent backpay proceeding, directing E to make payments into trust fund)

B. N. Beard Company **248 NLRB No. 016**
(E ordered to pay to U pension fund contributions unlawfully withheld; however, Bd does not provide at adjudicatory stage of proceeding for addition of interest on withheld payments; Bd left to compliance stage question whether E must pay additional amounts by reference to governing provisions of fund's documents and, absent such provisions, to any evidence of any loss directly attributable to withholding action, but not collateral losses)

The Saloon, Inc. **247 NLRB No. 156**
(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

5554 CAFETERIA PRIVILEGES

Henry Vogt Machine Company **251 NLRB No. 040**
(E to make Ees whole for any losses occasioned by its withdrawing privilege of eating lunch at E's subsidized cafeteria)

5563 ALLOWANCES FOR EQUIPMENT ETC.

Standard Homes, Inc. **249 NLRB No. 146**
(reimbursement ordered of safety shoe allowance unlawfully withheld under contract)

5570 LITIGATION COSTS AND EXPENSES (SEE ALSO 625-1967-5600)

Standard Homes, Inc. **249 NLRB No. 146**
(reimbursement of U and Bd for litigation costs not awarded where respondent's defense of its conduct were not patently frivolous)

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(E's request for reimbursement to itself and to Bd of investigative, processing, and litigation expenses incurred by each of them in instant 8(b)(7)(A) proceedings and in 8(a)(2) proceedings brought by U against E, on ground U prolonged various proceedings as subterfuge which permitted it to continue its unlawful conduct for extended period of time, denied, where litigation was not frivolous but dealt with serious and legitimate issues which are debatable)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E ordered to make Ees whole for all legal expenses incurred by them in defense of E's state civil lawsuit brought against them for libel and wrongful

5570—Cont.

interference, which proceeding arose out of filing of ULP charges by Ees with Bd and their concerted protected activities)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

H. H Fredericksen Co. **JD-(SF)-64-80**
(request by E, who was subject of dismissed complaint, for litigation expenses, denied, where, assuming Bd may require its statutorily independent GC to reimburse respondents when complaints filed against them have been dismissed, GC's determination to proceed had not been frivolously reached, and his decision was not unreasonable, or lacked a rationally justifiable foundation)

5570-0100 Generally

Eastern Maine Medical Center **253 NLRB No. 024**
(while instant case was strong candidate for imposition of litigation expenses remedy, such remedy not imposed in view of Bd majority's position on issue to the effect that such remedy will not be imposed even in an egregious case of bad faith bargaining unless E's defenses are deemed *frivolous*; while many of E's defenses were wide of mark and unpersuasive, they cannot with confidence be labeled frivolous)

Teckwal Corp. **253 NLRB No. 022**
(Bd did not require E to reimburse U for reasonable litigation costs incurred in connection with instant proceeding, since Bd did not find that E's defenses were *neither substantive nor occasioned by a reasonably debatable point of view*)

Safeway Stores, Inc. **252 NLRB No. 095**
(U's legal fees and expenses not assessed against E, notwithstanding U's contention that assessment justified by E's frivolous defenses to its clear obligation to furnish information and facts given other charges alleging failure to furnish information had been filed against E during past ten years, where all but two charges had been settled prior to ALJ's decision, and E had frequently furnished information to U but had never before been asked for this type of information)

Safeway Stores, Inc. **252 NLRB No. 184**
(assessment of reasonable legal fees and expenses incurred by U in pursuing charge that E refused to supply U requested information, denied where history of charges (against E) and settlements did not seem to show callous disregard by E of its collective-bargaining obligations)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reinbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(disavowing ALJ's characterization of order requiring E to pay Bd and U litigation costs as *traditional in Stevens cases*, Bd noted that it reviews all cases on their merits and grants or denies remedies based on record as a whole)

5570-5000 Types of litigation expenses

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(reimbursement denied of all investigative, processing, and litigation expenses incurred by Bd and by E, charging party herein, in processing instant 8(b)(7)(A) proceedings and in processing 8(a)(2) charges filed by U against E)

Sachs Electric Company **248 NLRB No. 092**
(Bd declined to reimburse U member whom U discriminatorily refused to register on hiring hall referral list for *out-of pocket expenses* in taking to arbitration his claim that he was entitled to such listing; such order unwarranted in view of availability of Bd's processes for determination regarding U's ULPs and adequacy of Bd's backpay and registration remedy)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse Bd and U for all litigation expenses, relating to meritorious ULP allegations and reasonably incurred as result of lengthy proceeding herein where, as in past, E reacted to organizing attempt by engaging in surveillance, creating impression thereof, promising and granting benefits, and unlawfully interfering with organizing campaign)

5580 BARGAINING EXPENSES OF UNION

Eastern Maine Medical Center **253 NLRB No. 024**
(Bd declined to adopt ALJ's recommended order requiring E to reimburse U for any and all expenses incurred in bargaining with E from beginning of 10(b) period until date on which bargaining ended, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicated unlawful)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E must reimburse U for its bargaining expenses where E engaged in prolonged course of ULPs designed to thwart U's efforts to negotiate contract)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

5584 JOINT LIABILITY OF UNION AND EMPLOYER

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**
(E held jointly, rather than secondarily, liable with U for reimbursement of unlawfully withheld U assessments since both E and U violated Act; further, bargaining agreement contained idemnification clause which shifted entire reimbursement obligation to U)

5596 ORGANIZING AND NEGOTIATING EXPENSES OF UNION

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reinbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse U for any excess organizing costs it reasonably incurred from date E willfully flouted its lawful duty to recognize U)

5598 MAKE WHOLE REMEDY

Aeronca, Inc. **253 NLRB No. 026**
(make Ees whole for loss of benefits due them by paying them *value* of lost benefits, Christmas turkey)

Tolmich, Inc. d/b/a Orange County Metal Processing **252 NLRB No. 177**
(*collateral losses* not included in *make-whole* remedy)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(Bd ordered make whole remedy to include reimbursing Ees for any medical, dental, or other expenses ensuing from E's unlawful failure to make such contributions; furthermore, E ordered to reimburse Ees for any contributions Ees themselves may have made for maintenance of contractual health and

5598—Cont.

welfare, pension, industry and apprenticeship funds after E unlawfully discontinued contributions)

National Car Rental System, Inc. **252 NLRB No. 027**
(*limited backpay* requirement accompanied bargaining order requiring E to bargain with U w/i 5 days of decision concerning effects of its closing facility as result of sale and relocation; back pay order designed to make whole Ees for losses, if any, suffered as result of violation and to recreate in some practicable manner situation in which U's bargaining position is not entirely devoid of economic consequences for E)

General Motors Corporation **251 NLRB No. 121**
(Bd ordered make-whole remedy, including reinstatement and backpay, where E did not sustain its burden of establishing that it would have discharged Ee even in absence of unlawful *Weingarten* interview)

Kraft Foods, Inc. **251 NLRB No. 006**
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Coyne Cylinder Company **251 NLRB No. 198**
(c/d order, rather than make-whole remedy appropraite for violation of Ee's *Weingarten* rights, where there was no evidence to indicate that any information obtained during unlawful interview which preceded Ee's discharge for smoking marijuana during his lunch breaks was relied on by E as basis for discharge)

Ohio Masonic Home **251 NLRB No. 059**
(where E cannot meet burden to show that decision to discipline Ee was not based upon information obtained during unlawful interview, make-whole remedy such as reinstatement, backpay, and expungement of all disciplinary records will be ordered; if E meets burden, make-whole remedy will not be ordered and, instead, traditional c/d order will be sufficient to remedy 8(a)(1) violation)

Ohio Masonic Home **251 NLRB No. 059**
(make-whole remedy for suspended Ee appropriate where decision to suspend was based, at least in part, on information obtained at E's unlawful interview with Ee; during interview E interrogated E regarding complaints E had received from E's supervisor and suspended Ee after she had explained circumstances surrounding complaints, which leads to conclusion that Ee was suspended because she did not have satisfactory explanation in response to complaints, rather than merely because there had been some complaints)

Newspaper Printing Corporation **250 NLRB No. 132**
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*collateral losses* not included in any additional amounts determined in order to satisfy Bd's *make-whole* remedy)

Campo Slacks, Inc. and J & F Sportswear, Inc. **250 NLRB No. 057**
(whether E must pay additional amounts into benefit funds in order to satisfy make whole remedy left to compliance stage)

Plasticrafts, Inc. **248 NLRB No. 161**
(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

N.L.R.B.* v. *Allied Products' Corporation, Richard Brothers Division **629 F.2d 1167 (C.A. 6, 1980)**
(contrary to E's contention, Bd did not disregard ct's remand to reconsider Bd's make-whole remedy in light of ct's theory of applicability of 10(b) limitations period which differs from that upon which Bd relied, where Bd accepted ct's finding that charging party did not become aware of E's unlawful suspension of merit wage review program until certain date, agreed that 10(b) limitations period was tolled until then, and consequently expanded its make whole remedy to include those Ees who had suffered before that date by reason of suspension of the scheme)

5598-5000 Interest

Construction Erectors, Inc. **252 NLRB No. 045**
(remedial order contained no provision for interest on E's obligation to fringe benefit trusts where such contract provisions dealing with Ee benefit funds are variable and complex and Bd traditionally leaves such determinations of interest on unlawfully withheld fund payments to compliance stage)

Pullman Building Company **251 NLRB No. 145**
(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

5599 OTHER FEES

Tolmich, Inc. d/b/a Orange County Metal Processing **252 NLRB No. 177**
(*collateral losses* not included in *make-whole* remedy)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(interest payments on additional amounts E must pay into benefit funds to satisfy Bd's *make-whole* remedy)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*collateral losses* not included in any additional amounts determined in order to satisfy Bd's *make-whole* remedy)

Local 777, Democratic Union Organizing Committee* v. *N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punative relief; injury was ambiguous)

6600 BARGAINING ORDERS

6601 GENERALLY

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that estoppel exists as result of actions by Bd, GC, and U whereby E was deprived of right to hearing on U's objections to election, and hearing on complaint issued against U and, consequently, GC and U [illegible] not seek bargaining order with *clean hands*, rejected, where there was no impropriety on U's part or any irregularity in actions of Bd or GC, E did not show it had any *right* to hearing on objections or to require that GC not settle complaint against U, and this is not proper forum for assessing remedy against U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(exhibits containing instructions given to supervisors concerning their obligations under labor laws and which were admitted into evidence held not to make bargaining order herein inappropriate since instructions were not transmitted to Ees and did not seek to retract or dissipate past ULPs; moreover, instructions were given over 1 year after refusal to bargain, and propriety of bargaining order must be apprised at time of ULPs and not at time Bd is deciding case)

Arizona Public Service Company **247 NLRB No. 054**
(while E *bought time* by its unlawful refusal to bargain over subcontracting of unit work, it was not evident how such advantage could be negated by Bd's remedial order and, on other hand, U is not w/o practical recourse under circumstances, including filing of appropriate charges and seeking additional relief from Bd)

N.L.R.B.* v. *Jamaica Towing, Inc. **632 F.2d 208 (C.A. 2, 1980)**
(bargaining order proper only if after objective review of all of relevant surrounding circumstances, including nature of E's misbehavior and any later events bearing on its impact on Ees, it may be reasonably concluded that Ees will be unable to exercise free choice in supervised rerun election)

Hedstrom Co., a subsidiary of Brown Group, Inc.* v. *N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(Bd not required to give elaborate explanation of factors warranting bargaining order but to estimate impact of ULPs on liklihood of fair rerun-election)

Hedstrom Co., a subsidiary of Brown Group, Inc.* v. *N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(Bd may consider ULPs committed subsequent to election in determining whether to issue bargaining order as they demonstrate E's continued opposition to unionization)

Kenworth Trucks of Philadelphia, Inc.* v. *N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

Bandag, Incorporated* v. *N.L.R.B. **583 F.2d 765 (C.A. 5)**
(ct has held that because of unusual nature of *Gissel* bargaining order Bd should look to events subsequent to ULP in order to determine appropriateness of (bargaining) order)

N.L.R.B.* v. *Ohio Masonic Home **620 F.2d 138 (C.A. 6, 1980)**
order enforced and election upheld wnere E did not sustain burden of establishing that Bd acted arbitrarily, capriciously, and abused its discretion in overruling objections and ordering certification)

N.L.R.B.* v. *Peninsula Association for Retarded Children and Adults **627 F.2d 202 (C.A. 9, 1980)**

Peoples Gas System, Inc.* v. *N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**
(purpose of bargaining order is to deter future violations of Act and not to be used as punative measure)

6601-5000 Status quo ante

Pittsburgh--Des Moines Steel Co. **253 NLRB No. 086**

6601-5000—Cont.

(request for order that upon resumption of bargaining E place before U those same proposals for contract which was before U prior to E's ULPs denied, since normal bargaining order will suffice to remedy violation)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(rationale for granting retroactive bargaining order is to re-establish conditions as they existed before E's unlawful campaign and not place U in a disadvantaged position)

Arizona Public Service Company **247 NLRB No. 054**
(E ordered, immediately upon U's request to bargain in good faith over any proposed lawful restrictions on subcontracting of unit work; since there was no allegation or evidence that E unilaterally altered its subcontracting practices, and absent any request therefor by GC, order requiring reinstatement of status quo ante or order requiring unit Ees to be *made whole* is unwarranted)

6607 APPROPRIATE ONLY FOR MAJORITY REPRESENTATIVE

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(bargaining order appropriate notwithstanding possibility that U might win election after counting unopened ballots)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(burden of proving U ever represented majority of Ees in appropriate unit not met)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(notwithstanding E clearly *flaunted the Act* in instant case, Bd did not issue requested *bargaining order* based on its decision in *United Dairy Farmers Cooperative Association,* 242 NLRB No. 179 (1979), inasmuch as there was no showing that U, in instant case, previously enjoyed majority support in the unit; Bd balanced interest of preventing outrageous ULPs with principal of majority rule)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(bargaining order, based upon U's valid card majority, warranted where E's misconduct was pervasive and flagrant in nature by discharging Ee after reducing his working hours, interrogations and unlawful no-solicitation rule)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(bargaining order appropriate where E has engaged in ULPs and at one point U had support of majority of Ees)

J. P. Stevens & Co., Inc. v. N.L.R.B. **612 F.2d 881 (C.A. 4)**
(Bd's denial of bargaining order appropriate where ULP's occurred 18 months prior to time U allegedly obtained majority status and neither undermined majority strength nor demonstrated any impediment to an election)

6612 TO REMEDY ULP'S WHICH PRECLUDE FAIR ELECTION

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(appropriate, where U had card majority and in view of E's ULPs, particularly wage increases)

Winco Petroleum and Cooper Oil Company, Inc., Successor Employer **252 NLRB No. 150**
(order requiring successor E to bargain with predecessor's U, held appropriate, where predecessor voluntarily recognized and bargained with U, violated 8(a)(1), (3) and (5) and was required under *Gissel* to bargain with U, and successor E purchased predecessor's business with actual knowledge of predecessor's ULPs)

Independent Association of Steel Fabricators, Inc.; etc. **252 NLRB No. 129**
(on ct remand, Bd in issuing bargaining order overruled ALJ finding that member of E-association withdrew from association and executed contract with outside U while entertaining good faith doubt of incumbent U's continued majority, where record was devoid of any objective factors w/i E's knowledge on which it could have reasonably relied to conclude that majority of its seven Ees no longer supported incumbent U)

Independent Association of Steel Fabricators, Inc.; etc. **252 NLRB No. 129**
(where ALJ conditioned bargaining order upon member of E association's resumption of steel fabricating, Bd held bargaining order was appropriate and deleted ALJ's condition, since record was unclear whether warehousing work being performed by E's Ees was bargaining unit work prior to E's discontinuation of fabrication operations; in any event, Bd will leave for appropriate subsequent proceedings question whether warehousing Ees are properly w/i that unit)

Rodeway Inn of Las Vegas **252 NLRB No. 053**
(E ordered to bargain where E engaged in unlawful promises of benefits to induce its Ees to abandon U activities, made numerous threats in reprisal to Ees' U organizing activities, and interrogated its Ees to undermine U's majority strength and impede election process; nature and extent of E's ULP conduct especially warranted bargaining order where 40 percent of 5 person bargaining unit were exposed to ULP conduct)

Apple Tree Chevrolet, Inc. **251 NLRB No. 076**
(Gissel order affirmed on remand, notwithstanding ct reversal of Bd finding of unlawful discharge, since E's other misconduct as affirmed by ct dissipated U's strength and possibility of erasing effects of such ULPs by use of traditional remedies was slight)

United Services For The Handicapped **251 NLRB No. 117**
(U card majority rather than election provides more reliable test of Ees' R desires where E's ULPs precluded holding of fair election)

Chester Valley, Inc. **251 NLRB No. 190**
(bargaining order appropriate where E's conduct, taken as a whole, could lead Ees to believe that direct negotiations with E already was and would be as favorable to them as what they could obtain through U, and that vote for U would cause E to become less generous to Ees; such ULPs would likely leave lingering effect on presently employed Ees who benefited from E's ULPs and on new Ees to whom events surrounding ULPs would be conveyed)

Chester Valley, Inc. **251 NLRB No. 190**
(bargaining order appropriate where possibility of erasing effects of E's ULPs and ensuring fair election by merely issuing c/d order ans posting of notice is slight at best and, on balance, bargaining order should issue on basis of authorization cards signed by majority of Ees at time of hearing; although Bd seems to draw no distinction between *category one* and *category two* cases described in Gissel, ALJ noted that he regarded instant case as being in *category two*)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that second election should be directed rather than bargaining order issued because it has not previously been found to have violated Act, and has not been charged with further violations since first election, rejected, where E's conduct prevented free and fair election in first place, and its unlawful conduct continued to affect old and new Ees which could not be wiped out by passage of time)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that no bargaining order should be issued because of U representative's misconduct during U organizing campaign, rejected, since U is not thereby disqualified from representing E's Ees inasmuch as issue herein is whether E should be ordered to bargain with U, not with U representative who may no longer be associated with U, or may not be U representative for bargaining with E)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(bargaining order warranted where ULPs committed by E constituted show of brute force, resulting in termination of only those Ees who had shown support for U, and impact of such discharges in small unit had for greater effect than in larger unit and made fair election impossible; consequently, E's ULPs may not be remedied merely by use of Bd's traditional remedies)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(appropriate, in view of Es unlawful interrogation and granting of benefits which particularly has tendency to undermine majority and impede election process by providing as much if not all they hoped to gain through U representation)

Brooks Cameras, Inc. **250 NLRB No. 116**
(appropriate, where E followed refusal to bargain with U having card majority with illegal discharge of approximately one-half of unit Ees, including U organizer)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(bargaining order warranted, in view of discharge of leading U adherent, discharge of other Ees for pretextual reasons, coercive interrogation and threats involving in one instance E's highest plant official, and continuation of E's egregious conduct at time of hearing w/o any abatement or remedy therefor)

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**
(appropriate in view of E's unlawful interrogation and discharges, where U had majority and had demanded recognition)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(appropriate, in view of E's campaign of intimidation and coercion after it learned of U organizing campaign which included threat to close business and to discharge Ees, and in view of its subsequent unlawful discharge of 10 U activists out of 27 Ee unit)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's conduct warranted bargaining order; inasmuch as E not only attempted to thwart representation desire of Ees but in the process intentionally sought to abort free election, odds for free choice in rerun election were minimal)

Hedison Manufacturing Company **249 NLRB No. 096**

6612—Cont.

(notwithstanding unresolved question regarding alleged unlawful discharges, herein remanded to ALJ, Bd issued order requiring E to c/d from engaging in unlawful activity and to bargain with U, since resolution of remanded issue did not affect Bd's conclusion that E's extensive ULPs had tendency to undermine U's majority and to impede election process, where ULPs ranged from discriminatory layoffs, unlawful imposition of conditions for transfer of Ees, threats of reprisal, and acts of surveillance and coercive interrogation directed at substantial number of Ees)

Battery Bill, Inc. **249 NLRB No. 030**
(appropriate, in view of unlawful discharges, interrogations, and threats)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(appropriate, where all members of unit had signed authorization cards and there was unlawful interrogation and discharge)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(inappropriate where ULPs not so egregious as to preclude holding of fair and reliable election)

Ditch Witch of Central Illinois, Inc. **248 NLRB No. 052**
(*Gissel* order appropriate where E's course of serious ULPs included coercive interrogations and discriminatory discharges which destroyed U majority status immediately after U demand for recognition)

Permanent Label Corporation **248 NLRB No. 021**
(violations of Section 8(a)(1), (3) and (4))

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(appropriate, in view of E's unlawful interrogation, threatening of plant closure and permanent replacement of ULP strikers if they did not abandon strike, refusal to reinstate strikers or to pay strikers accrued vacation pay, offering to strikers additional pay to abandon strike, and creating impression of surveillance)

Pay 'N Save Corporation **247 NLRB No. 184**
(bargaining order issued since discriminatory discharge of leading U adherents had especially pervasive effect on other Ees, and impact of discharges in small unit had far greater effect than in larger one and practically makes fair election impossible)

Tartan Marine Company **247 NLRB No. 073**
(appropriate, where U had card majority, in view of E's unlawful interrogations, threats, solicitation of Ees to withdraw U cards, encouraging Ee not to honor Bd subpoena, denial of wage increases, and refusal to rehire U adherent)

Tartan Marine Company **247 NLRB No. 073**
(mtn to reopen record to determine if bargaining order warranted on basis of Ee turnover, and lapse of time since ULPs, denied, notwithstanding dismissal of complaint in prior case in which E was Respondent)

Mid-East Consolidation Warehouse, A Division of
Ethan Allen, Inc. **247 NLRB No. 090**
(after count of discriminatees' ballots, if revised tally of ballots does not show that majority of votes have been cast for U, issuance of bargaining order is warranted, since E's unlawful conduct precluded likelihood of fair second election)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(bargaining order appropriate where E's ULPs were severe and widespread, were of character which would linger, and were incapable of being dissipated under traditional remedies which also would not prevent their recurrence; moreover, denial of bargaining order would create in minds of Ees notion that E could successfully flout law and escape bargaining obligation simply by virtue of passage of time)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(GC's request for prospective company-wide bargaining order covering future bargaining requests whenever U secures either a card majority or certification, denied, since this was not a certification refusal to bargain case and no need exists for such order, and requested remedy is not appropriate for Gissel refusal to bargain since bargaining order based on card majority requires Bd's assessment of facts and its remedial authority in each case; moreover, GC has readily available litigation to accomplish same result)

Jamaica Towing, Inc. **247 NLRB No. 042**
(bargaining order proper where, even though E's violations were not in category of exceptional cases and violations could not be characterized as *ourageous,* they were at least sufficiently serious and extensive, and their effect so lingering, that they fall w/i second category of *less extraordinary cases* marked by less pervasive practices which still have tendency to undermine majority strength and impede election processes)

Jamaica Towing, Inc. **247 NLRB No. 042**
(upon ct remand, Bd affirmed its issuance of bargaining order, where E deliberately engaged in preelection unlawful conduct designed to convince Ees that their demands would be met through direct dealing and that U representation would in no way be advantageous to them, and E thereby so thoroughly chilled Ees' desire for representation as to cause them to reject election process; in view of small number of unit Ees and impact of E's conduct upon them, inference is that such conduct would continue to influence Ees' free choice in rerun election)

Marlboro Trucking Co., Inc., C-J Construction Co.,
Inc., Suburban Yelow Cab, Inc. **JD-441-80**
(bargaining order appropriate in view of Es' open hostility to organizational activity, their readiness to act on it, their threats of discharge, and subsequent unlawful discharge of Ee and majority status U enjoyed at time of ULPs)

Carlina Knitting Co., Inc., et al. **JD-321-80**
(not appropriate where ULPs are not so *outrageous* or *pervasive* as to impede election process or make likelihood of fair election impossible)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(appropriate, in view of lingering effects of E's unlawful threats, encouragement of formation and domination of Ee committee, retaliatory layoff of Ees, and refusal to bargain with outside U which had majority)

N.L.R.B. v. Jamaica Towing, Inc. **632 F.2d 208 (C.A. 2, 1980)**
(bargaining order not warranted where E's ULPs consisted of interrogations, expression of opposition to U, threats of less overtime, stricter enforcement of workrules and implied promises that some of Ees' demands would be met as none of E's statements were ever put into effect and 38 percent of workforce left unit for reasons unrelated to E's ULPs; moreover, Bd, on remand, failed to elicit evidence regarding changed composition of workforce and whether Bd order might impair Ee rights, doing more harm than good)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(E ordered to bargain, especially in view of solicitation of grievances via E's telephone hot line and more stringent application of disciplinary rules to U adherents as well as numerous other statutory violations)

Electrical Products Division of Midland-Ross
Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(ct enforced Bd's bargaining order where E's ULPs tended to undermine U's majority strength and make fair election impossible because of nature of ULPs which involved implied threat to close plant communicated to significant percentage of Ees, participation of senior company officials in ULPs, and fact that factors undermining first election would be present at any future election)

Chromalloy Mining and Minerals Alaska Division,
Chromalloy American Corporation v. N.L.R.B. **620 F.2d 1120 (C.A. 5, 1980)**
(appropriate, notwithstanding ULPs concerned only one person each, since they were important because of closeness of election results and small size of bargaining unit; moreover E had history of resisting unionization)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(not warranted, notwithstanding unlawful interrogation, discharges which were corrected w/i 48 hours, creation of impression of surveillance)

Donn Products, Inc. and American Metals Corp. v.
N.L.R.B. **613 F.2d 162 (C.A. 6)**
(inappropriate where there were no discharges, widespread discrimination or harassment, where plant closing was for economic reasons, effect of ULP's would quickly dissipate, and finding of threat of sham bargaining was not supported by substantial evidence)

Faith Garment Company, Division of Dunhall
Pharmaceutical, Inc. v. N.L.R.B. **630 F.2d 630 (C.A. 8, 1980)**
(Bd did not abuse its discretion in issuing Gissel bargaining order where U enjoyed majority status by virtue of authorization cards, and effect of numerous ULPs on part of E tended to undermine this majority and impede election process)

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(contention that bargaining order is inappropriate because U lost majority status and because U directed campaign of violence and intimidation against Ees rejected, in light of E's ULPs found herein and insufficient evidence to invoke *Laura Modes* doctrine where record does not reflect that U was foregoing the *peaceful, legal process*)

N.L.R.B. v. Richard Tischler, Martin Rader and
Donald Connelly, Sr., a limited partnership, d/
b/a Devon Gables Nursing Home, et al. **615 F.2d 509 (C.A. 9) (1980)**
(bargaining order rather than c/d order appropriate, in view of E's refusal of U's demand for recognition on basis of card majority and its commission of numerous ULPs; possibility of erasing effects of past ULPs and insuring fair election by traditional remedies was slight)

6612-0100 Generally

Eastern Maine Medical Center **253 NLRB No. 024**
(E's reliance on Gissel for arguing against imposition of bargaining order held misplaced, since bargaining order herein arose by virtue of Bd certification and remains intact because of E's failure to abide by its statutory duty to bargain in good faith; bargaining order remedy is not based on whether card majority is better indicator of free choice than new Bd election, but rather on E's failure to bargain and other conduct prior to decertification election which was set aside because of E's unlawful conduct)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

6612-0100—Cont.

(bargaining order appropriate notwithstanding possibility that U might win election after counting unopened ballots)

Independent Association of Steel Fabricators, Inc.; etc. **252 NLRB No. 129**
(on ct remand, Bd issued bargaining orders against several Es who withdrew from E association and executed individual contracts with outside U w/o notifying incumbent U)

Apple Tree Chevrolet, Inc. **251 NLRB No. 076**
(Bd proceeds with tabulation of challenged votes for election results not out of any doubt concerning bargaining order remedy, but so as not to preclude U from enjoying any benefits to which it may otherwise be entitled as certified representative; moreover, Bd's established procedure to provide both remedies is because certification alone would not suffice to correct any unilateral changes E may institute between period when bargaining obligation commenced and issuance of certification, and further prolong E's refusal to bargain based on U's institution of still another ULP proceeding)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(E's discriminatory conduct directed to two known U supporters and affecting two of seven unit Ees, violative and remedy was bargaining order, since conduct was calculated and tended to dissapate and erode possibility of holding free election)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**

Spearin, Preston & Burrows, Inc. **248 NLRB No. 185**
(bargaining order inappropriate; in absence of ULP findings or agreement to permit majority status to be determined by other means, E need not bargain with U that has not demonstrated its majority status by means of an election)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(appropriate remedy where E threatened to discharge all driver-warehousemen in unit, unit was very small, E unlawfully promised insurance benefits and granted wage increase; moreover, E had prior background of violating Act to discourage U activity)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(bargaining order, based upon U's valid card majority, warranted where E's misconduct was pervasive and flagrant in nature by discharging Ee after reducing his working hours, interrogations and unlawful no-solicitation rule)

Wright Plastic Products, Inc. **247 NLRB No. 101**
(bargaining order necessary where E reacted swiftly and severely to organizational activity by discharging half of work force, threatening to close plant, w/i 1 week of initial organizational activity as such activity indicates that E is deeply committed to its anti-U position and substantial likelihood exists that it would resume its ULPs if second election were directed)

Jamaica Towing, Inc. **247 NLRB No. 042**
(while instant case did not include factors in hallmark type of case in which bargaining orders issue, such as discharge for U activity or direct threats to close or curtail operations, other types of conduct substantially similar to that involved herein, while perhaps less dramatic in nature, can and do affect Ees to such an extent that bargaining order is usually warranted, and instant case graphically demonstrates such severity of impact inasmuch as E's misconduct caused Ees to repudiate U before election)

Jamaica Towing, Inc. **247 NLRB No. 042**
(since bargaining orders have basic purposes of protecting Ee sentiments reached attime of card signing by majority of unit Ees and deterring E's future misbehavior, validity of bargaining order rests on evaluation of situation as of time unlawful conduct was committed)

Jamaica Towing, Inc. **247 NLRB No. 042**
(prejudicial impact of E's unlawful preelection conduct held not dissipated by Ee turnover since commission of ULPs and by passage of time since issuance of bargaining order; to delete bargaining order on basis of Ee turnover would reward, rather than deter, E guilty of preelection ULPs, and delay due to passage of time hardly denied justice to wrongdoer, for during period of delay, E enjoyed fruits of its misconduct which was directed precisely at avoiding bargaining obligation it still seeks to avoid)

Chef's Pantry, Inc. **247 NLRB No. 018**
(since effect of ULPs may be easily dissipated by Bd's standard remedies, new election, ordered after remedies are invoked, would be likely to fairly reflect true desires of Ees)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violations found held not sufficiently severe to warrant finding of violation of Sec. 8(a)(5) with accompanying bargaing order)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(although granting enforcement of order to c/d underlying violations, ct denied enforcement of bargaining order where record revealed neither lingering inhibitory effect nor likelihood of recurrence, and as such, did not warrant extraordinary remedy of bargaining order)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(where implied threats of plant closure communicated to significant number of Ees by senior company officials, psychological impact on all Ees is unlikely to dissipate and factors undermining first election would be present at future election; therefore bargaining order proper remedy)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's defense to bargaining order on ground that Bd gerrymandered two units so that it could issue bargaining order and that Bd's orders, directing reelection in one unit while ordering bargaining in another unit, were inconsistent, rejected; Bd did not abuse its considerable discretion in setting the bargaining units, and Bd did not make inconsistent findings because neither R nor ULP proceeding presented Bd with question whether free election could be held in second unit)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(enforcement of bargaining order denied where pre-majority conduct did not fall w/i Gissel *exceptional* case category inasmuch as three ULPs involved cannot be classed as *pervasive* in relation to two month organizational drive nor as *outrageous* since neither company officials nor large number of Ees nor immediate drastic consequences were involved; moreover, pre-majority conduct could not have undermined majority strength which is essential requirement of Gissel *less extraordinary* type of case)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(enforcement of bargaining order denied where post-majority conduct did not fall w/i Gissel *less extraordinary* type of case inasmuch as occurrence of 2-month election campaign cannot be considered *pervasive* nor was case *extraordinary* since conduct had limited impact on labor force and no senior company officials committed or sanctioned any ULPs)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(while it is for Bd and not cts to make determination as to effects on election process of ULPs of varying intensity because of Bd's knowledge and expertise, ct held that it would be remiss in its judicial function if, on record as sparse as herein, it were to enforce a bargaining order which, on every count, could not even be regarded as colorably in compliance with Gissel)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(E's failure to publicly rebuke perpetrators of ULPs held not to warrant issuance of bargaining order since E's failure to do so did not constitute substantial evidence that fair rerun election would not be possible inasmuch as any continuing impact which E's failure may have had could be corrected by c/d order and posting of notice)

J. P. Stevens & Co., Inc. v. N.L.R.B. **612 F.2d 881 (C.A. 4)**
(Bd's denial of bargaining order appropriate where ULP's occurred 18 months prior to time U allegedly obtained majority status and neither undermined majority strength nor demonstrated any impediment to an election)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(bargaining orders not limited to *exceptional* cases marked by *outrageous* and *pervasive* ULPs ... SCt approved *Bd's use of bargaining orders in less extraordinary cases marked by less pervasive practices which nonetheless still have tendency to undermine majority strength and impede election processes*)

N.L.R.B. v. Peninsula Association for Retarded Children and Adults **627 F.2d 202 (C.A. 9, 1980)**
(bargaining order not justified where violations (interrogation of Ees) relatively mild, occurred 4 months prior to election, person responsible for interrogations no longer employed at time election held and election preferred method of selecting bargaining representative)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(proper where only 1 Ee violatively discharged because of small size (4 Ees) of bargaining unit)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(determination of whether bargaining order warranted is task, not for reviewing cts, but for Bd based on its expert estimate as to effects on election of the ULPs)

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**
(bargaining order not justified where Bd did not balance E's, U's and Ees rights in determining necessity of order; Bd failed to consider whether Ees wanted U representation and here an election was held 2 years after E committed ULP and U was defeated)

6612-5000 May not be ordered where results of valid election not set aside

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(appointment of E's agent to be observer at election constituted objectionable conduct sufficient to set aside election and issuance of bargaining order in event that one of the joint representatives which previously collected significant number of U cards did not receive majority of valid votes)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(unlawful discharge of 1 Ee not sufficient basis for bargaining order where U campaign began weeks after discharge and cards were also obtained long after discharge)

6612-8700 Order operates from date of either employer's misconduct precluding fair election or union's demand for recognition

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**

Rodeway Inn of Las Vegas **252 NLRB No. 053**
(in absence of alleged violation of Sec. 8(a)(5) of Act and where U has not made demand for recognition, E ordered to bargain with U as of date on which E began its campaign of ULPs, after U had already achieved majority status)

Coating Products, Inc. **251 NLRB No. 170**

Chester Valley, Inc. **251 NLRB No. 190**
(date ULPs began)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(where E embarked on series of ULPs, including some designed to change status of its Ees to independent contractors, immediately after it received U ptn; moreover, necessity for bargaining order not changed by fact that lawful discharges caused U to lose its majority status)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(order to operate from date E's misconduct began)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(bargaining order warranted where E threatened Ees with loss of jobs and gave all Ees raise while objections pending which precludes second election)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(order to operate from date of U's demand for recognition)

Pay 'N Save Corporation **247 NLRB No. 184**
(order dated from date upon which E commenced its ULPs)

6612-9300 Order operates from date union attains majority status

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(U entitled to both certification and bargaining order if it wins election after revised tally of ballots is issued; bargaining order will issue only to correct any unilateral changes E may have made during time it had obligation to bargain with U)

Permanent Label Corporation **248 NLRB No. 021**
(order operates from date E refused to bargain after U had majority)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**

Alumbaugh Coal Corporation **247 NLRB No. 112**
(from date U did attain majority status in past)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(where U demanded recognition before attaining majority status, Bd held such demand as continuing after U had established majority status)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(where Bd issued bargaining order and ct set it aside, remanding to Bd for further proceedings and Bd reinstated bargaining order, ct affirmed Bd, E's institution of new plant rules while bargaining order set aside violative as Bd may make bargaining order retroactive to date U achieved majority status)

6618 APPROPRIATE DESPITE INCREASE IN UNIT EMPLOYEES SINCE ULPS

Amber Delivery Service, Inc. **250 NLRB No. 016**
(where E embarked on series of ULPs, including some designed to change status of its Ees to independent contractors, immediately after it received U ptn; moreover, necessity for bargaining order not changed by fact that lawful discharges caused U to lose its majority status)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(remand to Bd to consider additional evidence pertaining to necessity of bargaining order where ct reversed Bd on one ULP finding, as this is independent ground for review and differs from situation where ct upholds Bd order in toto)

6621 WHERE EMPLOYER HAS INDEPENDENT KNOWLEDGE OF UNION'S MAJORITY

Mazda of Anchorage **253 NLRB No. 112**
(appropriate, where E admitted that majority of unit Ees had designated and selected U as their bargaining representative, and it had refused U's request for bargaining)

English Brothers Pattern and Foundry **253 NLRB No. 067**
(E who threatened to close plant before it would bargain with U, violatively polled Ees, finding majority support for U ordered to bargain as it waived its right to election and bound by results of poll)

6623 IN ABSENCE OF DEMAND FOR RECOGNITION

Rodeway Inn of Las Vegas **252 NLRB No. 053**
(in absence of alleged violation of Sec. 8(a)(5) of Act and where U has not made demand for recognition, E ordered to bargain with U as of date on which E began its campaign of ULPs, after U had already achieved majority status)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(proper remedy)

6625 BARGAINING CONCERNING PARTICULAR SUBJECT

6625-2400 Subcontracting of work

Arizona Public Service Company **247 NLRB No. 054**
(E ordered, immediately upon U's request to bargain in good faith over any proposed lawful restrictions on subcontracting of unit work; since there was no allegation or evidence that E unilaterally altered its subcontracting practices, and absent any request therefor by GC, order requiring reinstatement of status quo ante or order requiring unit Ees to be *made whole* is unwarranted)

6625-8000 Conditions of employment of trainees

United States Steel Corporation **248 NLRB No. 090**
(Es to bargain on request concerning any future summer training schools to be attended by unlicensed Ees represented by U)

6637 BARGAIN WITH DESIGNATED EMPLOYEE REPRESENTATIVE

6637-8000 Negotiating committee including employees outside appropriate unit

Circle X Corporation **JD-(SF)-222-80**
(E to bargain with full U negotiating committee containing designated Ee members with which it had previously refused to bargain)

6650 BARGAIN IN GOOD FAITH

6650-0100 Generally

Pullman Building Company **251 NLRB No. 145**
(E to comply with *Master Agreement* retroactively to date ULPs began rather than from 6 months before charge was filed, since 10(b) period was tolled for remedy as well as for charge where U through no fault of its own did not immediately become aware of E's ULP's)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(customary remedy when E's refusal to bargain is incident to sponsorship of decertification campaign is order directing E to meet with U and bargaining good faith)

6650-1200 Execute agreed contract

6650-1205 As of original agreement date

Western Truck Services, Inc. **252 NLRB No. 096**
(Bd ordered E to execute bargaining agreement containing terms and conditions agreed upon by E and U and give effect to contract retroactively from date of refusal making Ees whole for any losses they incurred as a result of E's unlawful refusal to abide by terms of agreement)

6650-1277 Contract's expiration date extended

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(bargain for 1 year from date of settlement agreement less 3 months past settlement in which U made no request for bargaining)

6650-1288 Union given option of signing contract or bargaining

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

6650-2500 Honor contract

Pullman Building Company **251 NLRB No. 145**
(E to comply with *Master Agreement* retroactively to date ULPs began rather than from 6 months before charge was filed, since 10(b) period was tolled for remedy as well as for charge where U through no fault of its own did not immediately become aware of E's ULP's)

6650-3700 Furnish information

6650-3714 All relevant and necessary information

Southwestern Bell Telephone Company **247 NLRB No. 027**
(*modus operandi* for providing information on job vacancies filled and applications filed, unless parties otherwise agree in writing, enunciated in remedy provided by ALJ)

625-6650-3753 Photocopies of relevant documents

American Telephone and Telegraph Company---
Long Lines Department **250 NLRB No. 008**
(refusal to provide U with photocopies of requested documents necessary to process five grievances violative where, although E would rather furnish the information by reading to note-takers or permitting U to hand-copy documents, photocopying procedure would have been much less costly to E and U, and would have given U greater assurance of accuracy and completeness of information furnished)

6650-3756 Seniority list

Safeway Stores, Inc. **252 NLRB No. 184**
(furnish U information relating to seniority of, *interalios*, handicapped Ees)

6650-7500 Bargain until contract is achieved or impasse reached

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(*upon request of U* revoke unilateral changes in rates of pay, wages, and other terms and conditions of employment until such time as E negotiates with U in good faith to *agreement* or *impasse* thereon)

6675 EXTENSION OF CERTIFICATION YEAR

Eastern Maine Medical Center **253 NLRB No. 024**
(certification year not extended since E's refusal to bargain dated from 6 months before first ULP charge was filed, which fell almost at end of original certification year; consequently, bargaining obligation imposed herein is a general one to extend for a *reasonable period in which it can be given a fair chance to succeed*)

Libbie Convalescent Center a/k/a Libbie
Rehabilitation Center, Inc. **251 NLRB No. 116**
(not appropriate where E withdrew recognition shortly after end of certification year but no finding of bad-faith bargaining)

Carbonex Coal Company **248 NLRB No. 107**
(extended to 1 year from time E commences to bargain in good faith)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(ct found no abuse of discretion in Bd's refusal to extend certification for two years; if E complied with bargaining order, one more year of bargaining should suffice; if not, it will again be charged and *year will not have begun to run*)

6687 AFFIRMATIVE DEFENSES

6687-2500 Loss of union's majority

6687-2550 Employee turnover

N.L.R.B. v. Jamaica Towing, Inc. **632 F.2d 208 (C.A. 2, 1980)**

Chromalloy Mining and Minerals Alaska Division,
Chromalloy American Corporation v. N.L.R.B. **620 F.2d 1120 (C.A. 5, 1980)**
(although events such as Ee turnover occurring after E committed ULPs are relevant to decision as to whether to issue bargaining order, Bd may decide other considerations require bargaining order, such as here, where there is history of opposition to unionization and discriminatory refusal to recall, which indicated that E's antiU animus was partly responsible for turnover)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

6687-8100 Union misconduct

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(bargaining order proper notwithstanding U engaged in retaliatory conduct against Ee who testified against U at Bd hearing where conduct occurred 6 weeks after Ee testified, hearing almost completed and no evidence that conduct had any effect on testimony of any witness at hearing)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

7700 NOTICE REQUIREMENTS

7707 NECESSITY FOR POSTING

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7714 TIME OF POSTING

7714-9000 Other

Douglas & Lomason Company **253 NLRB No. 039**
(respondent's request that Bd issue its notice to Ees immediately so that it could be posted at once denied because Bd finds it inappropriate to issue a notice before Bd has decided a case and issued a decision therein)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to post notice for 1 year in view of severity of ULPs, 1-year time span w/i which they occurred, and delay between violations and implementation of remedy)

7728 PLACE OF POSTING

7728-0600 All locations where ULPs occurred

Red Food Store **252 NLRB No. 023**
(posting notices only at E's store where ULPs occurred appropriate)

7728-1200 All locations

Giant Food, Inc. **252 NLRB No. 182**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(Bd's remedial order concerning *company-wide dissemination of notice and access to company plants*, not punitive since notice and access order was designed to counteract use E made at other plants of its ULPs in bargaining at instant plant)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7742 MANNER OF NOTICE

7742-1700 Mailed

Eastern Maine Medical Center **253 NLRB No. 024**
(Bd ordered that notices be mailed to homes of all present Ees and all those employed w/i 10(b) period whether in bargaining unit or not, in view of E's extensive violations and evidence that unlawful conduct was motivated by desire to squelch unionization, and because of passage of time since commencement of ULPs due to protracted nature of instant proceedings)

National Car Rental System, Inc. **252 NLRB No. 027**

Wells Fargo Guard Services, A Division of Baker
Protective Services, Inc. **252 NLRB No. 013**
(where security guards work at 25 different facilities and do not regularly visit main office, mailing notices to their home addresses is most effective means of reaching Ees)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(mailed to Ees employed by E during time of ULPs)

SFS Painting and Drywall, Inc.; James Seech d/b/a
J. Seech Painting and Drywall **249 NLRB No. 009**
(mail signed copies of notice to all laid-off Ees who were bargaining unit members)

Wellman Industries, Inc. **248 NLRB No. 029**

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(mail to current Ees and all Ees on payroll at time ULPs were committed)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to mail copy of Bd notice to home of each of its Ees at all of its plants, together with explanatory letter signed by highest official of recipient's plant)

Shulman Air Freight, Inc. **JD-(SF)-39-80**
(*rather than posted* in view of fact that E's involved facility had ceased operation prior to instant ULP charge, complaint and hearing)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7742-3300 Read by company official or Board agent

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(Bd ordered notice to Ees be read by either owner or manager of E with requirement for attendance of Bd agent when notice read; reassurances that anti-U campaign will end must come from *top* from which it emanated; therefore, Bd required notice be read by management and not Bd Agent)

Wellman Industries, Inc. **248 NLRB No. 029**

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(notice to be read to current Ees assembled for that purpose by district manager; Bd to be afforded reasonable opportunity to provide for attendance of Bd agent)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(notice ordered read during working time by highest managerial official at plant or by Bd agent)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**

(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7742-5000 Published in newspaper of general circulation

Eastern Maine Medical Center **253 NLRB No. 024**

(Bd declined to adopt ALJ's recommended order requiring E to publish notices in newspaper of general circulation and to post notices for 1-year period unless impasse or contract is reached prior to that time, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicated unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(Bd ordered that E publish in local newspapers of general circulation copy of notice *two times per week for a period of 4 weeks,* since Bd deemed requirement to have been necessary part of remedy because it served to *emphatically---inform Ees of their Section 7 rights and assure Ees that Respondent will respect those rights*)

7742-6700 Notice published in employer's daily bulletin or other company publications

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(copy of notice to be included in appropriate company publications)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**

(Bd's requirement for inclusion of notice in *appropriate company publications* not warranted, since notice is to be given to Ees otherwise by mailing, by posting, and by reading, and additional requirement for inclusion of publication notices cannot be sustained inasmuch as only purpose would be to give notice of E's violations to E's customers, suppliers, and other public members which, although it might deter persons from violating Act, is an exaction which neither makes Ees whole nor assures them that they can bargain with E through representatives of their own choosing)

7756 PERSONS REQUIRED TO POST AND/OR MAIL NOTICES

7756-5000 Predecessor employer

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

(ct deferred to Bd's judgment that it would effectuate purposes of Act for predecessor E to mail notices to former Ees that it would not again violate their rights, notwithstanding it was no longer their E) 709422625666241000000722800603

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

7770 PERSONS REQUIRED TO SIGN NOTICES

7770-1100 Board of Directors

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

7770-1200 Company president

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

7770-40000 Manager

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(all notices to be signed personally by E's district manager)

7784 FORM AND CONTENTS OF NOTICE

7784-1000 Notice in foreign language

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(bilingual notice required to include Spanish version)

7784-2800 Language inappropriate

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**

(Bd required to revise language of notice to avoid possibility of any misunderstanding which might arise due to interpretation that E had been ordered to recognize U at all plants, instead of just 2 plants involved herein)

7784-8500 Employer will not interfere with employees' right to resort to Board processes

Don Pizzolato, Inc. **249 NLRB No. 136**

(E will not discharge Ees for participating in conferences on representation ptn at Bd offices)

8800 ORDERS TO REMEDY SPECIFIC VIOLATIONS

8817 SECTION 8(a)(1)

8817-0300 Rescind changes in work schedule

RJR Communications, Inc. **248 NLRB No. 124**

(resume discriminatorily discontinued 6 o'clock newscast)

8817-1200 Permit union to address employees on company time

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(E to give notice and equal time and facilities for U to respond to any address by E to its Ees on question of U representation; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(E to afford U right to deliver 30-minute speech to Ees on working time prior to any Bd election which may be scheduled in which U is a participant; this provision to apply for 2-year period from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(if E convenes any Ees at any plant during 2-year period following entry of order and addresses Ees on question of U representation, E ordered to give U reasonable notice thereof and afford 2 U representatives opportunity to attend and, upon request, permit U representative to address Ees for same amount of time)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(if w/i next 2 years, Bd schedules election in which U participates, Bd ordered E to afford at least 2 U representatives reasonable access to each facility to deliver 30 minute speech to Ees on working time; date thereof to be w/i 10 working days before but not w/i 48 hours prior to any election)

8817-1500 Grant union reasonable access to employer's facilities in nonwork areas during employees' nonwork time

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(granted for 6-month period upon request; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

8817-1600 Grant union reasonable access to bulletin boards

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(and to all places where notices to Ees are customarily posted granted for period of 6 months upon request)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(E ordered to grant U, upon request made w/i 2 years of date of order herein, reasonable access to plant bulletin boards and to cumstomary posting places at each plant for 1 year from date of request)

8817-2000 Give union list of employees' names and addresses

Sambo's Restaurant, Inc. **247 NLRB No. 122**

(upon request made w/i 1 year; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(E ordered to immediately furnish, upon U's request, lists of names, addresses, and classifications of all Ees at each plant as of latest available payroll date and to furnish corrected current list to U at 6 month intervals during next 2 years)

8817-6100 Expunge references to disciplinary action from employee's records

Texaco, Inc. **251 NLRB No. 063**

(where reprimand imposed on Ee as result of interview with Ee at which his U representative was unlawfully required to remain silent and Ee's admissions resulted in discipline)

8817-6100—Cont.

Southwestern Bell Telephone Company **251 NLRB No. 061**
(written confession to theft of E's property obtained at interview in which Ee denied his *Weingarten* rights)

Illinois Bell Telephone Company **251 NLRB No. 128**
(where Ee was discharged based on information obtained during interview at which she was unlawfully denied presence of representative, reinstatement proper to rectify harm caused; also all references to disciplinary action taken must be expungent from E's files)

Ohio Masonic Home **251 NLRB No. 059**
(expunge any reference to interview, at which Ee was wrongfully denied a representative, including any suspension notice or reference to suspension)

Sullair P.T.O., Inc. **250 NLRB No. 104**
(reference to 8(a)(1) discharge)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

Babcock & Wilcox Co. **249 NLRB No. 099**
(where unlawfully discharged U president was permitted to retire voluntarily on disability, normal backpay and reinstatement order held not applicable, and since discharge probably made him ineligible to hold or retain U office, E ordered to correct its records, deleting any reference to *discharge* and simply substituting therefor, the term *retirement* or *retirement on disability, accompanied by notification to U of such action*)

8817-6300 Expunge from employee personnel records that he quit employ

Penn-Dixie Steel Corporation, Joliet Bar Mill Division **253 NLRB No. 012**
(where Ee signed confession of misconduct and resigned during investigatory interview in which he was denied *Weingarten* right to U R)

8817-8900 Orders concerning solicitation and/or distribution rules

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(Bd's overly broad order must be specifically amended to show that solicitation and distribution of literature by Ees may be done only when both soliciting Ee and solicited Ee are on personal time, company authorized work breaks or during nonworking hours, and in area of plant outside normal work area)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Bd's orders that Es must c/d from *maintaining any rule or regulation prohibiting its Ees from soliciting on its premises after their shifts have been completed unless such prohibition is demonstrably necessary to maintain production, discipline or security* overly broad; since Es could prohibit Ees from soliciting during nonworking hours in public areas of their premises, Bd's order modified to read that Es must c/d from *maintaining any rule or regulation prohibiting its Ees from soliciting on its premises during nonworking hours in nonpublic areas of its premises*)

8817-9200 Cease threatening employees with discharge or other adverse action or taking such actions

Kahn's and Company, Division of Consolicdated Food Co. **253 NLRB No. 004**
(reinstate Ee discharged during unlawful investigative interview for evidence obtained after Ee was denied *Weingarten* right to R where E failed to show that decision to discipline was not based upon tainted information)

8817-9300 Award backpay for reduction in hours worked or pay raise withheld

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

8817-9700 Grant access to union representatives

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(for 2-year period, upon U's request and w/o delay, E ordered to permit reasonable number of U representatives access to nonwork areas for reasonable periods of time for purpose of communicating orally and in writing with Ees during nonwork periods)

8833 SECTION 8(a)(2)

8833-1400 Disestablish company union

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(E dominated and interfered with formation of in-plant Ee committee and contributed financial and other support to it)

South Nassau Communities Hospital **247 NLRB No. 067**
(*disestablishment* of Nursing Advisory Committee *not ordered*, since there was no allegation of E domination of Committee)

Hart Ski Mfg. Co., Inc. **JD-11-80**

N.L.R.B. v. Metropolitan Alloys Corporation **624 F.2d 743 (C.A. 6, 1980)**
(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

8833-2800 Withdraw and withhold recognition

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(E dominated and interfered with formation of in-plant Ee committee and contributed financial and other support to it)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E to withdraw recognition of independent U it had assisted and any successor in E's stores in location involved in this case)

Visu-Craft By H.B.S., Inc. **JD-887-79**
(no refund of dues which E collected pursuant to illegal checkoff agreement ordered where all but one Ee joined U voluntarily; nor was E ordered to cease recognizing U since no question of validity of recognition)

8833-2867 Permanent withdrawal of recognition ordered where

8833-2867-2500 Employer dominated union

Hart Ski Mfg. Co., Inc. **JD-11-80**

8833-2867-3700 Employer assisted union

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(cease recognizing or bargaining with Ee grievance committee or anyone elected by Ees to become member thereof as the representative of its Ees concerning wages, hours or terms and conditions of employment, including grievances)

8833-4200 Rescind contract

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd's actions to remedy U's failure to represent Ee enforced; Bd set aside collective bargaining agreement, decertified U, and ordered U to make Ee whole for differential between journeyman's scale and his actual wages for entire time of his employment with E)

8833-7900 Cease dealing with supervisor as union agent

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd's remedies of ordering E and multi-E association to cease and desist to recognize or deal with supervisor as U official and ordering E not to permit supervisor to serve as U official held proper)

8833-8800 Inform employees solicitation for union will not be permitted

World Wide Press, Inc. **JD-(SF)-12-80**
(E, already subject to order requiring it to disestablish assisted U, ordered to inform Ees that solicitation and collection of dues on behalf of assisted U was in derogation of incumbent U's representative status and will not be permitted)

8833-9200 Reimbursement of dues paid under contract

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(E to reimburse Ees for dues collected pursuant to unlawful checkoff to extent not already reimbursed)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

Visu-Craft By H.B.S., Inc. **JD-887-79**
(no refund of dues which E collected pursuant to illegal checkoff agreement ordered where all but one Ee joined U voluntarily; nor was E ordered to cease recognizing U since no question of validity of recognition)

Mountaineer Shaft and Tunnel Construction Company **624 F.2d 050 (C.A. 6, 1980)**
(ct held Bd w/o authority to order reimbursement of initiation fees and dues checked off, where Ees had *voluntarily* signed authorization cards which permitted checkoff, notwithstanding E unlawfully recognized U and locked out Ees to force them to ratify contract and affirm U as their bargaining agent)

8850 SECTION 8(a)(3)

8850-0100 Generally

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(Bd's order that E cease recognizing U as bargaining representative of E's male Ees unless and until such labor organization shall have demonstrated its majority status held appropriate remedy for E's unlawful extension of contract coverage to male Ees not in bargaining unit, notwithstanding order's resemblance to remedy for 8(a)(2) violation, which was not found in case; moreover, contrary to contention, order was given in recognition of existing situation rather than as sanction for unit based on sex)

8850-0300 Withdraw and withhold recognition

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(E to withdraw and withheld recognition of U as representative of male Ees, who were not in bargaining unit, unless and until U demonstrates exclusive majority representative status)

8850-0700 Offer employment to applicant

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(instate Ees whose employment was illegally conditioned on acceptance of less than contract called for and who did not accept such employment)

Kenneth and Mary M. McGlaughlin, Copartners, d/ b/a Hudson-High Super Duper **247 NLRB No. 199**
(discriminatee entitled to backpay from date he would have stated work at E had E not unlawfully withdrawn offer of position notwithstanding E may be overstaffed since at time of acceptance of job offer there was vacancy)

8850-2500 Resume discriminatorily discontinued position or operations

Amber Delivery Service, Inc. **250 NLRB No. 016**
(rescind changes in working conditions in duties of owner-operator Ees where purpose of changes was unlawful attempt to convert Ee status to that of independent contractor)

C-F Air Freight, Inc. **247 NLRB No. 60**
(E, who unlawfully closed its facility and subcontracted Ee's work, ordered to resume operations formerly performed at closed facility either at its former location or some other reasonable location w/i metropolitan area, where it was not shown that E would suffer undue hardship by application of Bd's usual remedies; moreover, E required to use its own Ees to perform work and to give preference for positions to discriminatees herein)

C-F Air Freight, Inc. **247 NLRB No. 60**
(in ordering resumption of unlawfully closed operation, Bd rejected E's defense that order was *unfair* and *unjustified* since it was not supported by evidence, and it was not shown that E would suffer undue hardship by application of Bd's usual remedies)

8850-3000 Restore benefits and privileges

Schorr Stern Food Corp. **248 NLRB No. 050**
(discriminatees who worked more than 24 hours in holiday week, which was basis for GC's specification that they had worked *full time* as required under contract held entitled to holiday pay)

8850-3010 Wage increase

Schorr Stern Food Corp. **248 NLRB No. 050**
(Ees held entitled to receive benefit of pay increase, which they would have been eligible to receive, but for discrimination against them, for period from 6 months prior to filing of charge to date of expiration of contract, notwithstanding E's claim that intervening memorandum agreement with U altered unit represented by U)

8850-3045 Vacations and vacation pay

Schorr Stern Food Corp. **248 NLRB No. 050**
(discriminatees held entitled to vacation pay, depending on length of service, where E produced no evidence that discriminatees could not under any circumstances have received vacations or vacation pay during period in question; any doubt in such regard must be resolved against wrongdoing E)

Schorr Stern Food Corp. **248 NLRB No. 050**
(fact that any discriminatee quit w/o notice held no basis for denial of vacation and sick pay benefits)

8850-3080 Sick leave benefits

Schorr Stern Food Corp. **248 NLRB No. 050**
(fact that any discriminatee quit w/o notice held no basis for denial of vacation and sick pay benefits)

8850-4000 Rescind discriminatory policy

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(E to reinstate Ee bonus and make Ees whole for any bonus accrued prior, or subsequent, to discontinuation of bonus payments)

8850-4300 Extension of contract coverage

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(E not to give effect to contract insofar as it applies to male Ees who were not in bargaining unit)

8850-4500 Expunge discriminatory disciplinary action from record

Metropolitan Edison Company **252 NLRB No. 147**
(E ordered to revoke all its discipline of U officers and records thereof only to extent it was discriminatory, that is, exceeded discipline meted out to other Ees)

Pease Company **251 NLRB No. 080**
(E ordered to remove from Ee's personnel file and to rescind written warning issued to him for engaging in U activity, and to notify Ee of its action)

Suburban Ford, Inc. **248 NLRB No. 051**
(--and refrain from making any such report to prospective E, employment agency, unemployment insurance office or reference seeker or inquiry)

C & G Coal Corporation **247 NLRB No. 179**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(expunge warning notices, suspensions or other notations dealing with Ees' discriminatory terminations; write letter to each affected Ee informing him or her of compliance herewith)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(and advise Ee in writing (that) Respondent has done so)

8850-4700 Relocation expenses

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8850-5000 Assign work on nondiscriminatory basis

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(offer discriminatee chance to drive large truck as frequently as he did prior to U activity commenced)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(E ordered to expunge unexcused absences from records of Ees who were unlawfully charged therewith)

8850-5100 Preferential hiring list

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8850-7500 Make payments to union welfare and pension funds which would have been made if not illegally terminated

Schorr Stern Food Corp. **248 NLRB No. 050**

8850-7700 Make payment for discriminatees' idle equipment

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E who unlawfully failed to make insurance payments ordered to reimburse Ees for payments Ees may have made to third party carriers)

8850-8000 Promote discriminatee to supervisory position

Ford Motor Company **251 NLRB No. 066**

8850-8300 Restore status of discriminatees disciplined for unexcussed absences

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(E ordered to restore discriminatees who were unlawfully charged with unexcused absences, and as result may have been assessed some form of disciplinary action, to status they would have otherwise occupied had they not been so charged, and to make them whole for any loss of earnings they may have suffered as result of E's action)

8867 SECTION 8(a)(4)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(permit Ees and U to use lunchroom for U meetings as in past, and notify them they have permission to do so)

8883 SECTION 8(a)(5)

8883-0100 Generally

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**
(E ordered to pay such portion of costs attributable to deletion from records of irrelevant nonbargaining unit information requested by U; accordingly, unless parties can agree on breakdown between reproduction and deletion costs, amount owed by Us shall be determined during compliance proceedings)

Arizona Public Service Company **247 NLRB No. 054**
(in case involving E's unlawful refusal to bargain with U over subcontracting of unit work, it was held that affirmative orders should be appropriate to particular situation requiring redress and should be tempered by practical considerations)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

8883-0100—Cont.

(where unrelated successor hadalready done what original order required E to do and what E no longer had authority to do, order was modified to eliminate affirmative action for E except for mailing of notices to former Ees that E would not again violate their rights)

8883-0400 Execute contract

Consolidation Coal Company **253 NLRB No. 104**
(sign absentee policy agreement reached with U)

8883-1200 Terminate or rescind present arrangements

Scott Printing Corporation **249 NLRB No. 134**
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante*, since contract of sale was *sham* transaction)

8883-1300 Furnish data concerning employment aptitude tests

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(ct declined to enforce Bd order requiring E to disclose certain information about employment aptitude tests requested by U in order to prepare for arbitration of grievances; in view of sensitive nature of information, minimal burden E's offer, upon receipt of consents from examinees, to disclose information placed upon U, and absence of evidence that E acted to frustrate U in discharge of its statutory responsibilities, ct rejected Bd's conclusion that E violated Act)

8883-1400 Resume discontinued operations

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(E ordered to reinstate operation where work is being performed at another of E's facilities, equipment is rented or shared among various plants, notwithstanding city is negotiating lease of facility to new tenant as E may lease another facility)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(E ordered to reestablish its own trucking operation which it has contracted out w/o making effort to prove economic necessity or to accommodate its drivers in finding other employment, and did not respond to U's subsequent bargaining request)

Wellman Industries, Inc. **248 NLRB No. 029**
(reopen closed division and set aside layoffs and transfers, restore eliminated jobs and set aside reductions in pay and classifications if U so requests)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(and reinstate Ees laid off)

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(where ALJ approved settlement agreement which did not require E who had violatively transferred work to another plant to resume operations, Bd reversed ALJ's approval in light of fact that no evidence that such resumption would endanger E's economic viability)

8883-1600 Terminate subcontracting and resume operation

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(in cases involving discriminatory termination of operations, restoration of *status quo ante* continues to be proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

8883-2000 Reinstate pension or insurance plan administrator

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

8883-2400 Pay damages as compensation for refusal to bargain

Peerless Roofing Co., Ltd. **247 NLRB No. 072**
(liquidated damages of 10 percent for each month E does not contribute to pension, welfare and similar trust funds found appropraite where contract, though expired, provide such remedy and additional payment was interpreted to mean 10 percent on entire sum due so not to constitute an unreasonable penalty)

8883-2500 Grant representation status at new location

Universal Security Instruments, Inc. **250 NLRB No. 092**
(apply terms of collective bargaining agreement to Ees at new location)

8883-2600 Pay backpay because of discontinuance of operations

National Car Rental System, Inc. **252 NLRB No. 027**
(*limited backpay* requirement accompanied bargaining order requiring E to bargain with U w/i 5 days of decision concerning effects of its closing facility as result of sale and relocation; back pay order designed to make whole Ees for losses, if any, suffered as result of violation and to recreate in some practicable manner situation in which U's bargaining position is not entirely devoid of economic consequences for E)

Ferro Mechanical Corp. **249 NLRB No. 083**

8883-2700 Pay relocation expenses

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8883-2800 Rescind unilateral changes

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(ALJ's failure to include in his recommended order requirement that E rescind any unilateral changes he may have instituted subsequent to commencement of its bargaining obligation, held not improper; retroactive bargaining order re-establishes conditions existing before E's ULP activity began, and implicit in order herein is E's obligation to bargain over unilateral changes at U's request; moreover, there are no facts or allegations which could support finding that E instituted, or refused to bargain, over unilateral changes since onset of its bargaining obligation)

Charmer Industries, Inc. **250 NLRB No. 031**
(Es required to cancel unilaterally instituted change in bill collection procedures whereby salesmen replaced delivery drivers in making c.o.d. collections, and to restore status quo ante to conditions which existed prior to change)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(respondent if requested by U, to withdraw wage proposals it has implemented and reinstate cost-of-living raises)

8883-2825 Disciplinary action taken without consulting union

Charmer Industries, Inc. **250 NLRB No. 031**
(rescind any disciplinary actions which occurred because, under Es' unilateral change in procedures of collecting c.o.d. payments from customers, salesmen may have lost commissions or accounts due to their failure to personally collect such payments)

8883-2837 Make payments into trust fund

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(E to make welfare fund and severance and retirement fund payments it had failed to make on behalf of unit Ees)

Traffic Control Services, Inc., and Its Trustee in Bankruptcy, Albert Rau **249 NLRB No. 077**
(whether E must pay additional amounts into benefit fund in order to remedy unlawful discontinuance of payments left to compliance stage to be determined by provisions pertaining to each fund or evidence of loss directly attributable to unlawful withholding of payments)

8883-2838 No recission where changes beneficial to employees

Peat Manufacturing Company **251 NLRB No. 153**
(nothing, in order remedying unlawful unilateral wage raise shall be construed as requiring recission of any wage increase or benefit which previously had been granted to unit Ees)

8883-2850 Resume deduction and transmittal of dues pursuant to checkoff

8883-2850-5000 Reimburse union for dues not transmitted

Independent Stave Company **248 NLRB No. 025**
(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

8883-2887 Reinstate number of hours worked as they existed

Wellman Industries, Inc. **248 NLRB No. 029**
(restore discontinued third shifts and make overtime voluntary if U so requests)

8883-2900 Preferential hiring

Ferro Mechanical Corp. **249 NLRB No. 083**
(place on preferential hiring list all Ees unlawfully terminated as result of plant closure w/o bargaining and offer reinstatement in event E resumes any part of terminated operations)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

625-ORDERS AGAINST EMPLOYERS

8883-4200 Restore benefits and privileges

8883-4256 Health care services and benefits

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **248 NLRB No. 040**
(where E's change in organizations administering health insurance plans was found unlawful unilateral change in health care insurance plans, Bd, although rescinding pursuant to ct remand portion of order requiring restoration of original organization, ordered E to restore all services and benefits available under original health plan, including basis used for computing charges or, in the alternative, payment of same level of benefits, and to provide *labor consultant* to handle Ees' insurance claims)

8883-4268 Bonus

Aeronca, Inc. **253 NLRB No. 026**
(make Ees whole for loss of benefits due them by paying them *value* of lost benefits, Christmas turkey)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(E to reinstate Ee bonus and make Ees whole for any bonus accrued prior, or subsequent, to discontinuation of bonus payments)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(E ordered to pay Christmas bonus and continue to pay bonus until it bargains in good faith with U or until U refuses to bargain in good faith over its cessation)

8883-4294 Hot lunch program

Henry Vogt Machine Company **251 NLRB No. 040**
(E to reinstate subsidized cafeteria ~~lunch~~ privileges)

8883-4500 Restitution for unilateral changes

Henry Vogt Machine Company **251 NLRB No. 040**
(E to make Ees whole for any losses occasioned by its withdrawing privilege of eating lunch at E's subsidized cafeteria)

Charmer Industries, Inc. **250 NLRB No. 031**
(Es ordered to reimburse salesmen for added time and cost of performing their sales' duties resulting from Es' unlawful unilateral change in bill collection procedures whereby salesmen replaced delivery drivers in making c.o.d. collections)

8883-4700 Restitution for wages and benefits under contract

N.L.R.B. v. Columbia Building Materials, Inc. **624 F.2d 193(T) (C.A. 9, 1980)**
(Bd's task is to fashion remedy for ULPs that will restore economic status quo that would have existed but for ULP; backpay order herein w/i remedial authority of Bd since it does no more than return affected Ees to economic state which they would have enjoyed absent unilateral wage change)

8883-4900 Offer to accept grievance for processing

Southwestern Bell Telephone Company **251 NLRB No. 061**
(in order to allow U to file grievance over Ee's discharge after they receive information which E originally refused to provide)

Newspaper Printing Corporation **JD-203-80**
(parties ordered to proceed directly to arbitration where E unlawfully refused to submit grievance to Joint Standing Committee which was third step in grievance procedure since to remand for consideration at third step *would merely be accomodating run-around being engineered by Respondent and... requiring an empty ritual*)

8883-5400 Cease solicitation for dominated or assisted union

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

8883-5600 Grant union representative access to plant

Yet Wah Restaurant **251 NLRB No. 010**

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd's *extraordinary* requirement for U access to plants at which U was Ee representative was justified for determining any repetition of conduct and for preventing impairment of U's effectiveness as representative; however, in requiring such access at E's non-U plants, Bd's order was not remedial with respect to charge involving interference with U as representative and cannot be sustained, particularly in view of other order provisions requiring notice be given to Ees throughout company of action taken on ULPs herein)

8883-7500 Restitution for wages and benefits under contract

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(E to pay all contractually mandated contributions for fringe benefits which E unilaterally ceased paying after contract expired until it negotiates in good faith to agreement or impasse)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(make Ees whole for medical expenses incurred which would have been covered by medical insurance plan if respondents had complied with contract and paid into contractual trust funds)

8883-8500 Bargain within a time certain from date of Board order

National Car Rental System, Inc. **252 NLRB No. 027**
(*limited backpay* requirement accompanied bargaining order requiring E to bargain with U w/i 5 days of decision concerning effects of its closing facility as result of sale and relocation; back pay order designed to make whole Ees for losses, if any, suffered as result of violation and to recreate in some practicable manner situation in which U's bargaining position is not entirely devoid of economic consequences for E)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(for a period of no less than 1 year from date on which Respondent fully complies with other terms of (instant) Order)

8883-8600 Bargain on a specific schedule until agreement or impasse

8883-8633 Bargain on consecutive days

Eastern Maine Medical Center **253 NLRB No. 024**
(Bd declined to adopt ALJ's recommended order requiring E to bargain 15 hours per week in presence of FMCS representative should U so request and to prepare written bargaining progress reports to be submitted to RD periodically, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicate unlawful)

8883-8700 Consent to a request that an FMCS representative be present

Eastern Maine Medical Center **253 NLRB No. 024**
(Bd declined to adopt ALJ's recommended order requiring E to bargain 15 hours per week in presence of FMCS representative should U so request and to prepare written bargaining progress reports to be submitted to RD periodically, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicate unlawful)

8883-8800 Periodically submit bargaining progress report

Eastern Maine Medical Center **253 NLRB No. 024**
(Bd declined to adopt ALJ's recommended order requiring E to bargain 15 hours per week in presence of FMCS representative should U so request and to prepare written bargaining progress reports to be submitted to RD periodically, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicate unlawful)

8883-9600 Reimburse union for loss of dues not checked off

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**

United States Steel Corporation **248 NLRB No. 090**
(Es to make U whole for monetary losses resulting from Es' unilateral failure to check off dues and failure to issue Ees, while students, separate checks covering dues)

650 ORDERS AGAINST UNIONS

1100 CEASE-AND-DESIST ORDERS

1125 BROAD ORDERS

1125-0100 Generally

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(no broad order in view of Bd's discontinuation of automatic adoption of broad orders in discharge cases and fact that finding by other judicial bodies of violations of other statues by respondent international U does not establish proclivity to violate this Act)

1125-0150 Proclivity to violate Act as basis for broad order

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(no broad order in view of Bd's discontinuation of automatic adoption of broad orders in discharge cases and fact that finding by other judicial bodies of violations of other statues by respondent international U does not establish proclivity to violate this Act)

1150 NARROW ORDERS

International Photographers of the Motion Picture Industry, Local 659, et al.(Medway Productions, Inc.) **250 NLRB No. 052**
(sufficient in circumstances of case)

1175 CEASE-AND-DESIST ORDERS RELATING TO SPECIFIC VIOLATIONS

District Council No. 2 of The Brotherhood of Painters and Allied Trades, AFL-CIO (The Paintsmiths, Inc.) **253 NLRB No. 017**
(c/d order modified, on remand, *so as to apply only to situations where appointment of a steward would displace a worker who is already on the job*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(Bd ordered that Respondents c/d from threatening and picketing with object of forcing or requiring Es, or inducing and encouraging Ees, in violation of Sections 8(b)(4)(i) and (ii), to cease d/b/b with non-U contractor generally rather than only at construction projects at which violations took place herein)

75-5000 Section 8(e)

1175-5000 Section 8(e)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

1600 ORDERS TO ALLEVIATE EFFECT OF FRIVILOUS LITIGATION

1633 What constitutes frivilous litigation

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**
(litigation of *container* case not frivolous notwithstanding great body of prior Bd cases where circuit ct recently reversed Bd decision in similar case)

Standard Refinery Union, Inc. **JD-632-80**
(assessment of litigation expenses against respondent U, unwarranted where dispute concerning correctness or incorrectness of E's name was compared to typical *8(a)(5)* type proceeding wherein parties seek to test underlying certification proceeding; pleadings were not frivolous)

1667 Types of order provisions

1667-5000 Reimbursement of litigation expenses

Standard Refinery Union, Inc. **JD-632-80**
(assessment of litigation expenses against respondent U, unwarranted where dispute concerning correctness or incorrectness of E's name was compared to typical *8(a)(5)* type proceeding wherein parties seek to test underlying certification proceeding; pleadings were not frivolous)

2200 ORDERS RELATING TO AGREEMENTS

2201 GENERALLY

Baine Service Systems, Inc. **248 NLRB No. 087**
(cease giving effect to and cancel contract entered into by E and U which lacked majority status)

3300 ORDERS RELATING TO REINSTATEMENT

3310 NOTIFYING EMPLOYER AND DISCRIMINATEE THAT UNION HAS NO OBJECTIONS TO, AND REQUESTS, REINSTATEMENT OF DISCRIMINATEE

United Electrical, Radio & Machine Workers of America, Local 262 (Hemisphere Broadcasting, Inc.) **JD-437-80**
(U required to give E written notice that it has no objection to employment of Ee whose discharge U unlawful caused, and affirmatively to request that E reinstate Ee, and simultaneously to send copies of such notification to Ee; E's misconduct was so blatant as to require affirmative request to reinstate, and simultaneous notification to E and Ee was required since U had not previously taken any corrective action voluntarily)

4400 BACKPAY ORDERS

4413 AS REMEDY FOR SECTION 8(e) VIOLATIONS

4413 AS REMEDY FOR SECTION 8(e) VIOLATIONS

4413-5000 Not appropriate

4413-5000 Not appropriate

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

4417 JOINT BACKPAY LIABILITY

4417-2000 International and local union

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**

4417-4000 International, local, and district council

Edward L. Nezelek, Inc. **252 NLRB No. 070**
(Local U held liable where E unlawfully deducted dues from Ees paycheck w/o checkoff authorization and District Council accepted dues where Local and District Council signed collective bargaining agreement and Local receives monthly subsidy from District Council)

4417-8000 Union and employer

4417-8025 Jointly and severally liable

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

Baine Service Systems, Inc. **248 NLRB No. 087**

4417-8025—Cont.

(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**

(E held jointly, rather than secondarily, liable with U for reimbursement of unlawfully withheld U assessments since both E and U violated Act; further, bargaining agreement contained idemnification clause which shifted entire reimbursement obligation to U)

4450 BACKPAY PERIOD

4450-2500 Beginning of period

4450-2525 Date of discrimination caused by union

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's notice to E that it did not object to immediate reinstatement of discriminatees and letter to Ees stating same in attempt to terminate backpay liability found invalid where conditioned on Ees maintaining U membership *to extent required by law;* additional notice to E also invalid where Ees were not informed individually and in writing)

4450-5000 End of period

4450-5009 Union notification of both employer and discriminatee that it has no objection to discriminatee's reinstatement or reemployment

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's notice to E that it did not object to immediate reinstatement of discriminatees and letter to Ees stating same in attempt to terminate backpay liability found invalid where conditioned on Ees maintaining U membership *to extent required by law;* additional notice to E also invalid where Ees were not informed individually and in writing)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

United Electrical, Radio & Machine Workers of America, Local 262 (Hemisphere Broadcasting, Inc.) **JD-437-80**

(backpay period ordered to run from date U unlawfully caused E to discharge Ee, until 5 days after U gives required written notice to E and Ee that it has no objection to E's employment of Ee)

Plumbers Local Union No. 83 (Power City Plumbing & Heating Inc.) **JD-38-80**

(where issue raised by charge was U's responsibility for causing Ee's discharge by subtle pressures on Ee-members not to work alongside Ee, U's statements of non-objection to E's employing Ee made to E's president at time when complaint based on the charge was still pending, held not unequivocal and not sufficient to toll backpay, especially since statements were not made to Ee and U did not discipline its agents and members who were found to have contributed to Ee's discharge)

Plumbers Local Union No. 83 (Power City Plumbing & Heating Inc.) **JD-38-80**

(U's letter sent allegedly to RD's office and to discriminatee stating that U had no further objection to E's employment of discriminatee, held insufficient to toll backpay, since there was no evidence that letter was received either by discriminatee or by RD and no evidence that copy of letter was sent to E)

4450-5072 Date discriminatee obtains substantially equivalent employment elsewhere

International Chemical Workers Union, Local No. 190 (FMC Corporation) **251 NLRB No. 204**

(where U unlawfully refused to process grievance over discharge, and grievance became time barred under bargaining agreement as Bd will presume that arbitration procedure would have resulted in decision favorable to dischargee since failure to arbitrate is fault of U and it is proper to resolve doubts against wrongdoer)

4450-7500 Tolling (See headings under 625-4450-7500)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's notice to E that it did not object to immediate reinstatement of discriminatees and letter to Ees stating same in attempt to terminate backpay liability found invalid where conditioned on Ees maintaining U membership *to extent required by law;* additional notice to E also invalid where Ees were not informed individually and in writing)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

4483 ULPS INVOLVED

4483-2500 Refusing to process grievance

International Chemical Workers Union, Local No. 190 (FMC Corporation) **251 NLRB No. 204**

(where U unlawfully refused to process grievance over discharge, and grievance became time barred under bargaining agreement as Bd will presume that arbitration procedure would have resulted in decision favorable to dischargee since failure to arbitrate is fault of U and it is proper to resolve doubts against wrongdoer)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(Bd properly resolved uncertainty in merit of grievance against U which created such uncertainty by unlawful act, through its improper investigation of grievance which made it impossible to determine merits of grievance)

4483-5000 Illegal fines

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**

(Ee reimbursed for losses and expenses caused by U's unlawful 8(b)(1)(A) conduct against him by requiring U reimburse Ee for lost health insurance benefit coverage applicable to unreimbursed medical expenses incurred and his personal premium expenses incurred in securing for himself essentially comparable insurance)

5500 REIMBURSEMENT ORDERS

5511 DUES, INITIATION FEES, AND ASSESSMENTS

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(U not required to reimburse independent contractor truck owner-operators for payment of initiation fees or dues resulting from enforcement of agreement unlawful under 8(e))

Actors' Equity Association **247 NLRB No. 172**

(where U maintained and enforced U security requirement that non-resident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from resident members, U ordered to reimburse all alien members for difference between amounts they paid as dues and amounts they would have paid if considered resident members)

Local 572, Teamsters (Ralphs Grocery Company) **247 NLRB No. 108**

(although U sought and caused unlawful discharge of Ee for failing to pay dues pursuant to U-security agreement, Bd did not order refund of reinitiation fee paid to obtain reinstatement and, instead, awarded Ee only loss of earnings incurred, since there was no evidence of inconsistent enforcement and no allegation that Ee did not actually owe the fee under U's bylaws)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**

(as violation for collecting assessment only technical in nature and U could still go against members who paid assessment but now request reimbursement, or pass proper assessment against members, Bd order, by placing heavy burden on U for locating and reimbursing all members who paid said assessment, held punitive and not appropriate)

5512 SERVICE FEES OR ASSESSMENTS IMPOSED ON NONMEMBERS

Exxon Company, U.S.A. **253 NLRB No. 027**

(U ordered to return to non U Ees all service fees imposed as prerequisite for unit members' receiving wages, hours, and terms and condition of employment for which U has bargained for)

5522 HIRING HALL FEES

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

5522-3300 Service or referral fees

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U to reimburse each applicant or Ee who made payments to U for its referral system when in actuality no such system existed; liability limited by Section 10(b) to 6-month period prior to filing and service of original charge)

5534 MEDICAL INSURANCE OR EXPENSE

Exxon Company, U.S.A. **253 NLRB No. 027**
(U primarily liable to make whole present or former Ees or their estates who may have suffered reduced insurance coverage or increased insurance costs by charging nonU Ees service fee as condition to continue in U medical plant)

5555 REINSTATEMENT FEES

Local 572, Teamsters (Ralphs Grocery Company) **247 NLRB No. 108**
(although U sought and caused unlawful discharge of Ee for failing to pay dues pursuant to U-security agreement, Bd did not order refund of reinitiation fee paid to obtain reinstatement and, instead, awarded Ee only loss of earnings incurred, since there was no evidence of inconsistent enforcement and no allegation that Ee did not actually owe the fee under U's bylaws)

5570 LITIGATION COSTS AND EXPENSES

5570-0100 Generally

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(E's request that U be required to reimburse it for expenses incurred in defending Section 301 suit, filing of which was held to be violative, since object was to compel arbitration of discriminatorily motivated grievance concerning alleged misclassification of Ee who had crossed picket line, denied; cases involving suits by Es against individuals whose ULP charges had been dismissed distinguished as to level of misuse of judicial process)

5570-5000 Types of litigation expenses

Electrical Workers, Local Union No. 1507 (General Electric Company) **252 NLRB No. 066**
(order requiring U to reimburse Ee for loss of wages and other expenses incurred as result of having to secure his rights through recourse to Bd's processes, inappropriate, where defenses which U had raised were debatable, rather than frivolous)

5577 WELFARE PENSION AND OTHER FUND PAYMENTS

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(wages paid to Ee in equivalency for fringe benefits on government funded jobs, if established as paid to Ee, would properly qualify as offsets to mitigate U's insurance expenses; and also available to offset pension benefits)

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(Ee's pension benefit credit reinstated retroactively and U, because of its 8(b)(1)(A) conduct, ordered to pay pension fund amount necessary to vest Ee with pension credit for hours worked during backpay period)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Operating Engineers, Local Union No. 12; et al. (Maas & Feduska, Inc.) **248 NLRB No. 175**
(reimburse E for all funds paid to U's trusts on behalf of all nonunit executives and supervisors)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for their contributions to U benefit funds as result of enforcement of agreement unlawful under 8(e))

5582 LOSS OF EARNINGS

Electrical Workers, Local Union No. 1507 (General Electric Company) **252 NLRB No. 066**
(order requiring U to reimburse Ee for loss of wages and other expenses incurred as result of having to secure his rights through recourse to Bd's processes, inappropriate, where defenses which U had raised were debatable, rather than frivolous)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for loss of income resulting from enforcement of agreement unlawful under 8(e); *make whole* remedy inappropriate for 8(e) violations)

International Longshoremen's Association, Local 1414 **JD-357-80**
(make whole discriminatee for any loss of earnings he may have suffered by not being referred to jobs in proper sequence as called for in U's bylaws because of outstanding debt to U's credit)

5588 JOINT LIABILITY OF UNION AND EMPLOYER

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

6600 BARGAINING ORDERS

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(Bd's traditional remedy of requiring respondent international U to demonstrate its majority status only by means of Bd certification held inappropriate where election, purporting to affiliate Ee committee with respondent U was ineffective and void because election was conducted in violation of minimal standards of democratic procedure or due process, and parties' existing agreement barred R election and record did not otherwise indicate possible raising of qcr; accordingly, Bd ordered respondent U to refrain from demanding or accepting recognition and bargaining unless and until majority of Ees have selected U)

7700 NOTICE PROVISIONS

7728 PLACE OF POSTING

7728-2100 Union's local business office

District Council No. 2 of The Brotherhood of Painters and Allied Trades, AFL-CIO (The Paintsmiths, Inc.) **253 NLRB No. 017**

7728-2800 Union meeting halls

District Council No. 2 of The Brotherhood of Painters and Allied Trades, AFL-CIO (The Paintsmiths, Inc.) **253 NLRB No. 017**

7742 MANNER OF NOTICE

7742-2500 Mailed

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**

7770 PERSONS REQUIRED TO SIGN NOTICES

7770-2500 Union business agent

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(U business agent not required to personally sign and read notice as requested by GC where he was not personally involved in acts of violence of threats of violence)

7784 FORM AND CONTENTS OF NOTICE

7784-3700 Union does not object to, and requests, reinstatement or employment of discriminateee

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's notice to E that it did not object to immediate reinstatement of discriminatees and letter to Ees stating same in attempt to terminate backpay liability found invalid where conditioned on Ees maintaining U membership *to extent required by law;* additional notice to E also invalid where Ees were not informed individually and in writing)

8200 REPAY MONETARY PENALTIES IMPOSED ON EMPLOYER FOR USE OF NONUNION MATERIALS

8800 AFFIRMATIVE ORDERS RELATING TO SPECIFIC VIOLATIONS

8811 SECTION 8(b)(1)

8811-3300 Section 8(b)(1)(A)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(international U ordered to take whatever steps necessary to restore status quo ante void affiliation election by ceasing to act as Ee representative and refraining from administering contract, disavowing any claim to recognition as Ee representative and election of officers of affiliated local, revising identity or alternatively dissolving such local, restoring to pre-existing labor organization any property or monies transferred to international, notifying E, its Ees, and pre-existing labor organization that it has taken foregoing actions, and preparing appropriate notices for posting)

8811-3320 Keep records on hiring and referral operations

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(U to keep and retain for 2 years permanent written records of its hiring hall operations, make them available to RD and to nonmember applicants for inspection and copying, and submit four quarterly reports to RD concerning referral of nonmember applicants)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ordered, notwithstanding U's failure to maintain written standards and records held not violation per se)

8811-3324 Expunge unlawful discipline from records

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**

8811-3334 Reimburse employee for comparable health insurance secured at own expense

Exxon Company, U.S.A. **253 NLRB No. 027**
(U primarily liable to make whole present or former Ees or their estates who may have suffered reduced insurance coverage or increased insurance costs by charging nonU Ees service fee as condition to continue in U medical plant)

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(Ee reimbursed for losses and expenses caused by U's unlawful 8(b)(1)(A) conduct against him by requiring U reimburse Ee for lost health insurance benefit coverage applicable to unreimbursed medical expenses incurred and his personal premium expenses incurred in securing for himself essentially comparable insurance)

8811-3335 Reimburse employee for lost wages

International Longshoremen's Association, Local 1414 **JD-357-80**
(make whole discriminatee for any loss of earnings he may have suffered by not being referred to jobs in proper sequence as called for in U's bylaws because of outstanding debt to U's credit)

8811-3337 Provide insurance coverage

Exxon Company, U.S.A. **253 NLRB No. 027**
(permit nonU Ees to participate in medical insurance plan w/o payment of service fee)

8811-3378 Revocation of certification

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd ordered proper remedy in revoking U certification where U did not fairly represent all those in bargaining unit)

8811-6700 Section 8(b)(1)(B)

8811-6733 Rescind unlawful fine; refund fine

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**
(rescind fines even though remitted by international)

8811-6750 Expunge unlawful discipline from records

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(expunge record of unlawful suspension)

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**
(expunge any records relating to finding of members, and request international to do so relating to its processing of charges)

8811-6775 Notify disciplined individual of revocation and rescission of discipline

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**

8811-6783 Notify employer's representative and employer that Union has no objection to representative's employment or selection as representative

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer)

8822 Section 8(b)(2)

8822-3100 Notify employer and discriminatee that unionhas no objection to reinstate or hiring of discriminatee

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(U ordered to notify E in writing and to notify discriminatees in writing that it has no objection to their employment with unimpaired seniority and with all other rights and privileges previously enjoyed)

8822-4500 Keep records of hiring and referral operations

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(U to keep and retain for 2 years permanent written records of its hiring hall operations, make them available to RD and to nonmember applicants for inspection and copying, and submit four quarterly reports to RD concerning referral of nonmember applicants)

8822-5800 Cease discriminatorily appointing union stewards

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(U ordered to not cause or attempt to cause E to appoint steward from outside of regular Ee complement modified to apply only to situations where appointment of steward would displace worker already on job)

8833 SECTION 8(b)(3)

8833-6100 Furnish information relevant to bargaining process

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**
(U must formally request from Fund administering health and welfare plan that it provide information sought by E)

Abestos Workers, Local No. 80 (West Virginia Master Insulators Association) **248 NLRB No. 022**
(information relating to U's referral system)

8888 SECTION 8(e)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for payment of initiation fees or dues resulting from enforcement of agreement unlawful under 8(e))

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for their contributions to U benefit funds as result of enforcement of agreement unlawful under 8(e))

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for loss of income resulting from enforcement of agreement unlawful under 8(e); *make whole* remedy inappropriate for 8(e) violations)

8888-0100 Generally

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(make Ees whole remedy generally inappropriate and overbroad in terms of 8(e) violations)

675 PROCEEDINGS TO DETERMINE BACKPAY LIABILITY (FOR COMPUTATION OF BACKPAY SEE HEADINGS UNDER 625-4433)

0100 GENERALLY

Ace Be[illegible] Co. **250 NLRB No. 066**
(con[illegible], that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

Ace Beverage Co. **250 NLRB No. 066**
(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(purpose of backpay orders is to make Ee whole for discrimination against him and to deter E from further unlawful activity)

1000 BACKPAY SPECIFICATION PROCEEDINGS

2000 TIME OF DETERMINATION

2075 DETERMINATION LEFT TO COMPLIANCE STAGE OR SUPPLEMENTARY PROCEEDING

Sav-On Drugs, Inc. **253 NLRB No. 045**
(where GC moved to amend order to include those Ees who were later allegedly revealed to be in same situation as Ees included in decision and respondent did not reply to motion, Bd granted GC's alternative request to permit parties to litigate during compliance proceedings the status of the Ees in question)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(backpay formula left to compliance stage of proceeding where there might be several classes of persons discriminated against for whom different approaches might be indicated)

St. Francis Hospital **252 NLRB No. 174**
(E's mtn to reopen record which asserts that subsequent to hearing, Ee was arrested for distributing marijuana, pleaded guilty to charge, and that E has policy of discharging such Ees, more appropriately left to complaince stage of proceeding)

Safeway Stores, Inc. **252 NLRB No. 184**
(any dispute over application of guidelines concerning costs of compilation and furnishing requested information will be treated in compliance stage of proceeding)

Bacchus Wine Cooperative, Inc., and Bacchus Wine International **251 NLRB No. 207**
(Bd declined to reopen record to admit evidence of E's alleged *business reverses* making reinstatement of unlawfully discharged Ees to comparable positions impossible, since such matters are more appropriately handled at compliance stage of proceeding)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(interest payments on additional amounts E must pay into benefit funds to satisfy Bd's *make-whole* remedy)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(question of whether E must pay any additional amounts into benefit funds in order to satisfy Bd's *make whole* remedy left to compliance stage of instant case, since provisions of Ee benefit fund agreements were variable and complex)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(whether E must pay additional amounts into benefit funds in order to satisfy make whole remedy left to compliance stage)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(fruther hearing required to determine if 2 Ees quit during strike or are eligible for backpay)

Trojan Transportation, Inc. **249 NLRB No. 084**
(period for computation of backpay and seniority commenced from date of unlawful discharges, notwithstanding E's contention that period should have commenced from date discriminatees' replacements were added to work force, since discriminatees were not recalled but were unlawfully discharged; however, E permitted to attempt to mitigate its backpay liability by showing in compliance proceedings that discriminatees would have been laid off for economic reasons at some time after date of discharges, had Ees not been unlawfully discharged)

Traffic Control Services, Inc., and Its Trustee in Bankruptcy, Albert Rau **249 NLRB No. 077**
(whether E must pay additional amounts into benefit fund in order to remedy unlawful discontinuance of payments left to compliance stage to be determined by provisions pertaining to each fund or evidence of loss directly attributable to unlawful withholding of payments)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(Bd left to compliance stage question of whether E must pay additional amounts into various funds in order to satisfy make-whole remedy since provisions of Ee benefit fund agreements were variable and complex and Bd did not provide at adjudicatory stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments)

Bide-A-Wee Home Association **248 NLRB No. 110**
(E not precluded by Bd's order from attempting to prove in compliance stage of proceeding that unlawfully discharged strikers incurred willful loss of earnings by continued participation in strike after their date of discharge)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(ALJ's ruling to exclude evidence of E's alleged unconditional offer of reinstatement, appropriate since issue of alleged offer of reinstatement is matter best raised during compliance stage of the proceeding)

Schorr Stern Food Corp. **248 NLRB No. 050**
(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

First Termite Control Co., Inc. **247 NLRB No. 106**
(E's contention that it made valid offers of reinstatement to discriminatees left to compliance stage of proceedings)

H. S. Brooks Electric, Inc., K & F Electric Co. Inc., and Waldemar Nikolai, Their Agent **247 NLRB No. 082**
(E's defense of assignment transferring assets to fund in question and of tender of offer to pay contributions to fund on behalf of discriminatees held not litigable herein but to be considered upon compliance)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(extent to which discriminatees failed to avail themselves of hiring hall referrals or to sign roster and participate in new referral system instituted after issuance of original complaint alleging unlawful refusal to refer and operation of hiring hall in unlawful manner where new referral system was subject of recent charge)

Thermo Transport, Inc. **JD-584-80**
(backpay entitlement of discriminatees referred to *compliance* where issue of backpay allegedly due them was not litigated at ULP hearing)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(details of how many, if any, permanent replacements were hired and classification in which they worked, their hours, rates of pay, and the like, relegated to compliance stage of instant proceeding)

4000 PLEADINGS

4015 IMPROPER OR LATE FILING OF ANSWER

Standard Materials, Inc. **252 NLRB No. 094**

4015—Cont.

(mtn to strike backpay specification because answer not sworn to and did not contain post office address as required by Bd's R/R, denied, where response to Notice to Show Cause for Summary Judgment cured above defects and was treated by Bd as amended answer though no amendment to Specification filed and Bd's R/R provide that its rules shall be liberally construed)

4025 SUFFICIENCY OF PLEADINGS

4025-2000 General denial insufficient

Standard Materials, Inc. **252 NLRB No. 094**

4025-4000 Grounds for disagreement must be stated

Seven Motors Ltd., d/b/a Mazda South; et al. **252 NLRB No. 116**
(allegations of backpay specification accepted as true and summary judgment granted where Responsent failed to comply with requirement)

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(where backpay specification selected representative Ee for purpose of determining discriminatee's quarterly gross pay and E did not challenge that Ee's selection when it filed its answer and amended answer but did so on second day of backpay liability hearing, E precluded from raising issue)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(ALJ's reliance on gross earnings formula contained in E's amendment to its ans to backpay specification held appropriate, notwithstanding GC's contention that reliance on formula did not satisfy requirements of Sec. 102.54(b) of Bd's R/R, since Respondent's original ans satisfied Section's requirements and GC did not object to proposed amendment)

4025-8000 Respondent must plead matters within its knowledge

4025-8050 Failure to deny or explain why information cannot be furnished constitutes admission

Ralph Schaffner, an Individual d/b/a Schaffner Construction Co. **252 NLRB No. 136**
(Respondent's contention that ptn for summary judgment in backpay proceeding should be stayed pending discharge of Respondent's ptn from Bankruptcy ct in which Bd and discriminatees are named as creditors, rejected, since adjudication in Bankruptcy does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; since mtn to stay did not specifically deny or respond in any way to allegations of backpay specification, allegations of specification are deemed admitted)

4050 AMENDMENT OF PLEADINGS

4050-0100 Generally

Standard Materials, Inc. **252 NLRB No. 094**
(mtn to strike backpay specification because answer not sworn to and did not contain post office address as required by Bd's R/R, denied, where response to Notice to Show Cause for Summary Judgment cured above defects and was treated by Bd as amended answer though no amendment to Specification filed and Bd's R/R provide that its rules shall be liberally construed)

4050-3300 Both General Counsel and respondent bound by pleadings

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(ALJ's reliance on gross earnings formula contained in E's amendment to its ans to backpay specification held appropriate, notwithstanding GC's contention that reliance on formula did not satisfy requirements of Sec. 102.54(b) of Bd's R/R, since Respondent's original ans satisfied Section's requirements and GC did not object to proposed amendment)

4075 AFFIRMATIVE DEFENSES

4075-5000 Defenses which may be raised in backpay proceeding

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

4075-6700 Defenses which may not be raised in backpay proceeding

H. S. Brooks Electric, Inc., K & F Electric Co. Inc., and Waldemar Nikolai, Their Agent **247 NLRB No. 082**
(defense that respondent is defunct held issue, not properly raised in backpay proceeding; is w/o legal significance and not an issue for Bd to resolve)

6000 BURDEN OF PROOF

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

6017 GENERAL COUNSEL HAS BURDEN OF PROVING GROSS BACKPAY

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

6017-3300 Estimates of actual income sufficient

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(discriminatee and another Ee comparable where both employed in same classification, paid same wage rate, Ee first laborer hired after discriminatee so seniority almost identical)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**

6017-6700 ALJ must recommend most accurate method of computing backpay, not merely determine whether General Counsel's formula is reasonable

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(notwithstanding parties stipulated to interim earnings figures, ALJ's rejection of gross earnings formula to which interim earnings were keyed caused ALJ to reject interim earnings when they could not be utilized in gross earnings formula adopted by ALJ)

6033 RESPONDENT HAS BURDEN OF PROVING DEDUCTIONS FROM GROSS BACKPAY

6033-0100 Generally

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

M Restaurants, Incorporated d/b/a The Mandarin v. N.L.R.B. **621 F.2d 336 (C.A. 9, 1980)**
(when Bd establishes existence of ULP and gross amount of backpay due, burden shifts to E to *prove circumstances which would limit its liability*)

6033-2500 *Make-up* increases

Plasticrafts, Inc. **248 NLRB No. 161**
(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

6033-3300 Willful idleness

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(Ee who attends trade school classes but registers with state unemployment services and continues job search not rendered unavailable for work by virtue of school attendance)

Highview, Inc. **250 NLRB No. 090**
(test of whether discriminatee has made reasonable search for employment is whether he/she had dilligently sought other employment during entire backpay period, and fact that discriminatee had no interim earnings during backpay period is not probative upon issue of whether discriminatee made diligent search for work)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(Ee did not engage in willful loss of earnings during backpay period where he left interim employment because he was not receiving benefit of having health, welfare, and pension contributions made to U funds and wanted to work where such would be done)

DeLorean Cadillac, Inc. v. N.L.R.B. **614 F.2d 554 (C.A. 6) (1980)**
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

M Restaurants, Incorporated d/b/a The Mandarin v. N.L.R.B. **621 F.2d 336 (C.A. 9, 1980)**
(unlawfully discharged Ee who was unable to find work for 18 months and then left country for 1 year period during which time he earned minimal salary found not to have voluntarily left labor market; *discharged Ee is not confined to the geographical area of former employment; he or she remains in the labor market by seeking work in any area with comparable employment opportunities*)

6033-5000 Interim earnings

Standard Materials, Inc. **252 NLRB No. 094**
(E's general assertion that discriminatees failed to seek and retain available interim employment sufficient to put issue into question; hearing ordered for this determination)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(self-employment should be treated like any other interim employment in measuring backpay liability)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(moneys earned during period of discrimination from a supplemental job which discriminatee also held during his employment with respondent/E are not deductible from gross backpay as interim earnings)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(notwithstanding parties stipulated to interim earnings figures, ALJ's rejection of gross earnings formula to which interim earnings were keyed caused ALJ to reject interim earnings when they could not be utilized in gross earnings formula adopted by ALJ)

8000 PROCEDURE WHEN CLAIMANT IS UNAVAILABLE

8025 BACKPAY PLACED IN ESCROW UNTIL CLAIMANT CAN BE EXAMINED

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(held in escrow for period not to exceed 1 year at which time funds returned to E, however E still has obligation to discriminatee)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(where discriminatee cannot be located backpay placed in escrow for one year; if discriminatees located, Respondent and GC shall be accorded opportunity to examine them concerning interim earnings and RD shall make final determination as to amounts which shall be deducted from backpay; if discriminatees not located w/i year, backpay in escrow returned to Respondent)

9000 SETTLEMENTS OF BACKPAY

9033 NECESSARY PARTIES

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(deletion of trustee in bankruptcy as party respondent from original complaint pursuant to ct order does not bar GC from raising issue of trustee's derivative liability for first time in backpay proceeding)

9067 GROUNDS FOR SETTING ASIDE

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(where parent company was not named in proceeding until after ct remanded to Bd, it will not be named as R as it was never afforded opportunity to defend itself against ULP charges or litigate its relationship with E; determination can be made at compliance stage of proceeding)

Thermo Transport, Inc. **JD-584-80**
(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

700 GENERAL LEGAL PRINCIPLES

712 AGENCY PRINCIPLES

2500 COMMON LAW AGENCY PRINCIPLES APPLICABLE

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

5000 RESPONSIBIITY OF EMPLOYER OR UNION FOR ACTS AND STATEMENTS OF AGENTS AND OTHERS

5014 BASIS OF RESPONSIBILITY

5014-0100 Generally

5014-0120 Actual authority

F & D Enterprises, Inc., d/b/a Westward Ho Hotel **251 NLRB No. 160**
(E did not violate Act when employment agency, acting as E's agent, refused to refer applicant for job with E because of his U membership, since E was not liable for employment agency's action inasmuch as employment agency was, at most, a special rather than a general agent; neither express nor apparent authority was conferred upon the agency to refer only nonU applicants, and E did not ratify the refusal to refer)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

5014-0140 Apparent authority

Wm. Chaison & Co., Inc. **252 NLRB No. 006**
(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

F & D Enterprises, Inc., d/b/a Westward Ho Hotel **251 NLRB No. 160**
(E did not violate Act when employment agency, acting as E's agent, refused to refer applicant for job with E because of his U membership, since E was not liable for employment agency's action inasmuch as employment agency was, at most, a special rather than a general agent; neither express nor apparent authority was conferred upon the agency to refer only nonU applicants, and E did not ratify the refusal to refer)

Tylertown Wood Products **251 NLRB No. 048**
(local minister who, allegedly acting as E's agent, made unlawful statements to Ees held not agent of E, since he was not placed in position to be identified with management in eyes of Ees and to translate to them policies and desires of management)

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Streamway Division of The Scott & Fetzer Co. **248 NLRB No. 054**
(even though Ees were unable to specifically identify agent of E, E held responsible for conduct of member of firm employed by E to conduct attitude survey among Ees, where firm's member to whom critical remarks were attributed was placed in his position of apparent authority by E; even if firm did not rise to level of agent w/i Sec. 2(13), E is still responsible for its conduct under Sec. 2(2) under circumstances herein)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(E held responsible for statements of *yard foreman,* where E held him out as representative of management whose words could reasonably be understood to reflect position of Company)

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(fact that agent itself was not sure it possessed authority to negotiate not controlling; it is apparent authority that it exhibits to third party that controls principal's responsibility)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(personnel office Ee held agent of E where he was placed in *strategic position* so that his apparent authority to act on E's behalf could be fairly implied and Ees could reasonably believe he reflected E's policy)

Broad Street Lincoln Mercury, Inc. **JD-208-80**
(E responsible for antiU campaign which it did nothing to disavow and which it permitted former owner and operator to carry on on its premises; former owner was parent of present owners and leased them one of buildings they used)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(whether or not individual considered to be *boss* fell w/i statutory definition of *supervisor* held that such individual was at all relevant times so clearly identified with E's management that he must be concluded to be agent of E)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(contention that E's son was rank-and-file Ee rejected where E gave son *Guidelines for Management and Supervisor Personnel Prior to Representation Election* which demonstrated that son was aligned with management and at least apparent agent of E)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(responsibility for individual's conduct held correctly attributed to E either on basis thatindividual was a supervisor or that E was using individual in campaign to oust U)

5014-0190 Adoption or ratification

F & D Enterprises, Inc., d/b/a Westward Ho Hotel **251 NLRB No. 160**
(E did not violate Act when employment agency, acting as E's agent, refused to refer applicant for job with E because of his U membership, since E was not liable for employment agency's action inasmuch as employment agency was, at most, a special rather than a general agent; neither express nor apparent authority was conferred upon the agency to refer only nonU applicants, and E did not ratify the refusal to refer)

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

5028 RESPONSIBILITY OF EMPLOYER FOR ACTS OF OTHERS

5028-0100 Generally

Behring International, Inc. **252 NLRB No. 055**
(in determining agency relationship, it is not necessary to find direct evidence that anti-U activities of Ees were authorized or subsequently ratified by E, since agency may be inferred from circumstances)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(where E chooses worker or supervisor as agent to communicate its anti-U position to Ees, and places him in a position identifying him with management so that Ees would reasonably understand that he spoke for management, E may not escape responsibility for his conduct in carrying out its anti-U campaign)

5028-1200 Interdependent relationships with other employers

5028-1233 Familial relationship

Cardinal Heating and Cooling, Inc. **JD-835-79**

5028-1233—Cont.

(contention that E's son was rank-and-file Ee rejected where E gave son *Guidelines for Management and Supervisor Personnel Prior to Representation Election* which demonstrated that son was aligned with management and at least apparent agent of E)

5028-1267 Economic relationship

F & D Enterprises, Inc., d/b/a Westward Ho Hotel **251 NLRB No. 160**
(E did not violate Act when employment agency, acting as E's agent, refused to refer applicant for job with E because of his U membership, since E was not liable for employment agency's action inasmuch as employment agency was, at most, a special rather than a general agent; neither express nor apparent authority was conferred upon the agency to refer only nonU applicants, and E did not ratify the refusal to refer)

5028-2500 **Nonsupervisory employees**

Maremont Corporation, World Parts Division **251 NLRB No. 110**
(statement by personnel office secretary that E would close or relocate plant if U won election, not attributable to E, where personnel office secretary was nonunit Ee and not agent of E nor did E place her in position where Ees could reasonably believe she was speaking for management)

5028-2501 Generally

United States Postal Service **252 NLRB No. 014**
(physician's remarks about U, made during physical examination of Ee, and his questioning of Ee as to why Ee wanted U representative with him at physical examination, not unlawful where, although physician was supervisor of nurses, he was not acting in supervisory capacity as to Ee being examined, and his question and remarks that Ee deserved discipline, which were due to his personal irritation, could neither be attributed to E nor reasonably be construed as threat of retaliation)

5028-2512 Acting in apparent concert with desires of employer

G. F. Business Equipment, Inc. **252 NLRB No. 123**
(Ee who interviewed prospective Ees, explaining job duties, wages, informing Ees of their hire is agent of E as she is clothed with apparent authority and held agent, even if not supervisor)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

Regal Shoe Shops #2421 & 2340 **249 NLRB No. 179**
(former supervisory Ee rehired as strike replacement as assistant manager (not supervisor) found agent of E when he conveyed same anti-U message to Ees that E had conveyed and had knowledge of Ees U membership that could only have been obtained from E)

5028-2537 Authority to act may be inferred from

5028-2537-2000 Cooperation of supervisory employee

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

5028-2537-4000 Employer's failure to disavow conduct

Sentry Investigation Corp. **249 NLRB No. 130**
(violation of Section 8(a)(1) where E failed to disavow threats of shop steward that if Ees changed bargaining representative they would lose their jobs to members of new representative with more seniority)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

5028-2537-6000 Subsequent ratification of employer

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

5028-2550 Company time, use of, indication that employee acts for employer

Hart Ski Mfg. Co., Inc. **JD-11-80**
(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

5028-2562 Employees have just cause to believe person acting for employer

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(notwithstanding E referred to Ee as supervisor, Ee found to be an agent of E and not a supervisor,where Ee had none of the authority vested in supervisory personnel and relayed information from management to Ees; he had been placed by management in strategic position where Ees could reasonably believe he spoke on E's behalf)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(E responsible for acts of nonsupervisory Ee to whom he accorded visibly superior status, and whom he used as conduit to Ees concerning job assignments and layoffs so that Ees reasonably believed him allied with and speaking for management)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(E responsible for acts of Ee in regard to directly discussing with Ees insurance rates being negotiated where E placed Ee in position which identified him with management and Ees could reasonably believe that Ee's comments reflected management's position)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(whether or not individual considered to be *boss* fell w/i statutory definition of *supervisor* held that such individual was at all relevant times so clearly identified with E's management that he must be concluded to be agent of E)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(responsibility for individual's conduct held correctly attributed to E either on basis thatindividual was a supervisor or that E was using individual in campaign to oust U)

5028-2575 Related to supervisor

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(ct was extremely dubious that evidence showing one of Ee's brothers was co-owner of plant and that another was a supervisor supported Bd's finding of agency; ct noted that its failure to deal with agency issue, in face of E's concession that substantial evidence supported ULP findings, in no way suggests that Ee who is related to company officials is, w/o more, an agent of E so that she may be precluded from expressing views on unionization during election campaign)

5028-2583 Family relationship to owner or officer

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(wife of high company official who questioned striker about why Ees were engaged in U activities held agent for E where questioning done in presence of her husband)

A-1 Building Materials **JD-828-79**
(Ee son of owners of E found to be supervisor and agent of E where parents own 100% of company stock, father held son out to Ees as his trainee successor and son gave work instructions and permission to leave work when his father was absent)

Rapid Manufacturing Co. v. N.L.R.B. **612 F.2d 144 (C.A. 3)**
(ct was extremely dubious that evidence showing one of Ee's brothers was co-owner of plant and that another was a supervisor supported Bd's finding of agency; ct noted that its failure to deal with agency issue, in face of E's concession that substantial evidence supported ULP findings, in no way suggests that Ee who is related to company officials is, w/o more, an agent of E so that she may be precluded from expressing views on unionization during election campaign)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct adopted Bd's conclusion that conduct of 3 Ees was attributable to E inasmuch as all 3 Ees were closely related to E's president, E was small family corporation with 2 of these 3 Ees sitting on board of directors)

712-AGENCY PRINCIPLES

5028-5000 Outsiders

5028-5010 Attorneys or other advisors

Flair Molded Plastics, Inc. **250 NLRB No. 017**
(attorney of record)

Streamway Division of The Scott & Freezer Co. **249 NLRB No. 054**
(even though Ees were unable to specifically identify agent of E, E held responsible for conduct of member of firm employed by E to conduct attitude survey among Ees, where firm's member to whom critical remarks were attributed was placed in his position of apparent authority by E; even if firm did not rise to level of agent w/i Sec. 2(13), E is still responsible for its conduct under Sec. 2(2) under circumstances herein)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(attorney who had handled cases and other legal matters for E held E's agent acting as go-between with favored U in E's assistance and support of favored U, notwithstanding attorney was also U's agent with authority to sign contract with E on U's behalf)

5028-5030 Civic officials and others prominent in community

Tylertown Wood Products **251 NLRB No. 048**
(local minister who, allegedly acting as E's agent, made unlawful statements to Ees held not agent of E, since he was not placed in position to be identified with management in eyes of Ees and to translate to them policies and desires of management)

5028-5045 Lessor

Broad Street Lincoln Mercury, Inc. **JD-208-80**
(E responsible for antiU campaign which it did nothing to disavow and which it permitted former owner and operator to carry on on its premises; former owner was parent of present owners and leased them one of buildings they used)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

5028-5054 Labor consultant

Shirt Shed, Inc. **252 NLRB No. 042**

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(interrogation of Ees by E's labor relations consultant violative where he neither advised them of purpose of questions nor indicated to them that participation was voluntary)

5028-5090 Welfare fund and trustees

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

5028-6200 Employer association members and officers

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E-association is clothed with authority to negotiate for E, its' actions will bind E notwithstanding it misrepresented to U or failed to inform U of crucial facts pertinent to basis or extent of its authority)

5028-7500 Supervisory employees and management representatives

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(supervisor who was instructed in management meetings to speak to Ees concerning E's opposition to U and was furnished materials for such purpose held agent of E)

5028-7514 Authorization and ratification by employer of supervisor's acts

Times-Herald, Inc. **253 NLRB No. 066**
(no violation when, in response to question asked by supervisory member of unit, E told him there was way Ees could end strike and referred him to Regional Office of Bd from which he thereafter received decertification ptn which he filed, there was no evidence that any Ee reasonably believed supervisor was acting on behalf of management, and GC failed to present any evidence relating to circumstances in which the solicitations for decertification of U were made)

Flexsteel Industries, Inc. **JD-(SF)-274-79**
(supervisor's friendly warnings to Ees concerning their U activities which were not ratified by or even know by E, not attributable to E)

5028-7528 Indicia of power to bind

5028-7528-0100 Generally

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(E was bound by assistant supervisor's post-election statements, notwithstanding fact that he exercised supervisory responsibilities relatively infrequently)

5028-7528-2500 Employees have just cause to believe supervisor's acting for employer

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's general manager and its executive vice-president held agents of E where Ees were clearly justified in believing they were authorized to speak for management in expressing opposition to U)

5028-7528-5000 Minor supervisory duties

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(comments by *low level supervisor* not conclusive as to E's liability since statements by low-level, marginal supervisors are less likely to influence Ees' decision than statements by high level officials which bear imprint of company policy)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(no violation, where no evidence E authorized remarks of *low level supervisor*; further, where *low level supervisor* had voted in election and Ees knew that his anti-U bias was personal Ees did not have just cause to believe he had made threatening remarks on behalf of management)

5028-7570 Types of employees

5028-7570-0600 Bookkeeper

Chester Valley, Inc. **251 NLRB No. 190**
(E held answerable for controller's promises of financial benefit to Ees, in view of E's admission in its answer that controller was E agent, controller's participation in E conference and compliance with company attorney's instructions in making promises, supervision over office staff, and fact that Ees had just cause to believe that controller had authority to advise them about what E's decision about wages and benefits would be)

5028-7570-1200 Foreman or immediate supervisor

B. E. & K., Inc. **252 NLRB No. 036**
(E's denial of responsibility for allegedly unlawful acts of general foreman, who was U member and sympathetic to U cause, on ground he was U agent, rejected, where there was no evidence that he acted in latter capacity in committing alleged unlawful acts; or that, in conduct complained of, he did other than communicate what he knew or construed to be company policy, nor does evidence reveal circumstances that would have caused Ees to believe that foreman's statements were mere personal opinions)

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

5028-7570-2400 Individual trustees of union welfare fund

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

5028-7570-3000 Leadman

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(responsibility for individual's conduct held correctly attributed to E either on basis thatindividual was a supervisor or that E was using individual in campaign to oust U)

5028-7570-3600 Officers, executives, etc.

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's general manager and its executive vice-president held agents of E where Ees were clearly justified in believing they were authorized to speak for management in expressing opposition to U)

5028-7570-4800 Personnel counselor or staff member

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(personnel office Ee held agent of E where he was placed in *strategic position* so that his apparent authority to act on E's behalf could be fairly implied and Ees could reasonably believe he reflected E's policy)

5028-7570-5400 Personnel officials

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

5028-7570-6000 Plant manager

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's general manager and its executive vice-president held agents of E where Ees were clearly justified in believing they were authorized to speak for management in expressing opposition to U)

5042 RESPONSIBILITY OF UNION FOR ACTS OF OTHERS

5042-0100 Generally

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U cannot abdicate responsibility to control its picket line with inaction where either U leaders or picket captains are present when picket line misconduct occurred)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U liable for picket conduct away from picket line which was reasonable extension of actions which occurred on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U's toleration of picket interference with ingress and egress to facility, unlawful)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U violated Act where pickets damaged vehicles in presence of U agents)

5042-3300 Affiliated organizations

5042-3370 Local as agent of international or Building Trades Council

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(international U not acting as front for local U of different international U; local was not substitute for international but was international's agent for handling matters concerning election, processes, ULPs, collective bargaining and contract enforcement; E, presented no evidence that international U intended to cede its certification to local or to abandon its bargaining rights)

5042-6700 Agents

5042-6701 Generally

5042-6701-5000 Agency may be established by conduct

Six Flags Over Mid-America, Inc. **253 NLRB No. 013**
(Ees' statement that E's agreement to second election amounted to admission of guilt not attributable to U where 1 Ee's presence to assist U in arriving at election agreement meant nothing more than that U utilized U adherent with personal knowledge of work force and E's operation to provide it with necessary information preliminary to reaching election agreement and other Ee's presence at counsel table to assist U's counsel did not suggest that he possessed any agency status)

5042-6701-5025 Failure to repudiate conduct

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(where U business representative was present and nodded his head when U member threatened Ee with physical violence for refusing to join strike and for failing to honor U's picket line, U held responsible for the threats to Ee, since U business representative's conduct constituted tacit approval of the member's threats)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) **JD-195-80**
(U held responsible for misconduct of picketers and students making common cause with picketers, since E acquiesced in and ratified such misconduct where picket captains failed to disavow or restrain misconduct)

5042-6767 Responsibility for acts within agent's scope of employment

5042-6767-5000 Apparent authority controlling

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(an assistant in U's training program, who, when alone at hiring hall, had authority to refer individuals to jobs and who, insofar as visitors could tell, had authority generally to act and speak for U found to have been held out to public as U's agent)

5042-6783 Special types of agents

5042-6783-2000 Attorney

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

5042-6783-3000 Business agents

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(officers, organizers and business agents are agents of U in context of strike w/i meaning of Section 2(2) of Act)

5042-6783-3200 Member of union official's family

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5042-6783-4000 Foreman

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5042-6783-7400 Employee committee members

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(shop steward and Ee committeemen held to have acted for U in requesting discharge of Ees, where GC established prima facie agency of steward and committeemen to act for U in matters of discharge and grievances, and U failed to rebut by adducing evidence that steward and committeemen were not agents or acted so far outside their actual, implied or apparent, authority as to require conclusion they did not bind U by their acts)

5042-6783-7800 Pickets, picket major's, etc.

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(picket captains are agents of U w/i Section 2(13) of Act)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(individual U members cannot be considered agents of U *per se*; however, if picket line misconduct occurs, U responsible for pickets' actions even if particular picket who engaged in misconduct cannot be identified, and even responsible for misconduct away from picket line which was reasonable extension of actions which occurred on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U cannot abdicate responsibility to control its picket line with inaction where either U leaders or picket captains are present when picket line misconduct occurred)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U violated Act where pickets damaged vehicles in presence of U agents)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U not responsible for threats and violence engaged in by pickets where these actions took place away from picket line and no evidence was introduced to prove that this was U venture or extension of picket line activity)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(threats by unidentified picket to Ee as she walked home, unlawful, where picket left picket line to make threats)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(U held responsible for pickets' several acts and threats of violence where U authorized and organized pickets to act as its representative, and in its interest under supervision of its business agent, and U failed to disavow or take action against offending strikers)

5042-6783-9000 Steward

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

5042-6783-9000—Cont.

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(shop steward and Ee committeemen held to have acted for U in requesting discharge of Ees, where GC established prima facie agency of steward and committeemen to act for U in matters of discharge and grievances, and U failed to rebut by adducing evidence that steward and committeemen were not agents or acted so far outside their actual, implied or apparent, authority as to require conclusion they did not bind U by their acts)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

5042-6783-9200 In-plant organizing committee members

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(threat by one member of inplant organizing committee to take another member to court because he quit going to U meetings, not unlawful absent actual or apparent authority)

5042-6783-9500 Rank-and-file employee

Behring International, Inc. **252 NLRB No. 055**
(rank-and-file Ees held to have acted as E's agents in conducting unprecedented Ee meeting at plant, where E allowed such meeting, accepted Ees' signed request for withdrawal of U ptn and their list of requested job improvements which had evolved from meeting, subsequently granted most of Ees' requests, and no Ees were questioned or reprimanded with respect to their long absences from their work stations to attend meeting)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(fact Ee had been active in U's organization campaign does not establish agency relationship between Ee and U absent evidence either authorized or condoned conduct)

5042-6783-9600 Union adherent

Connecticut Foundry Company **247 NLRB No. 145**
(fact that Ee serves as U observer at election or is prominant in organizing campaign does not make him U official and Bd is reluctent to set aside election due to conduct of such Ee)

5056 MEMBERS

5056-0100 Generally

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5070 DEFENSES

5070-6000 Repudiation by employer or union

Church's Fried Chichen, Inc. **JD-(SF)-301-79**
(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

5084 RATIFICATION OF ACTS OR STATEMENTS BY EMPLOYER OR UNION

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

725 CONTRACT LAW

0100 GENERALLY

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**
(in field of labor relations, if parties have agreed upon terms of bargaining agreement, they are bound by terms agreed upon notwithstanding failure to sign it)

0150 TECHNICAL RULES OF CONTRACT LAW NOT NECESSARILY CONTROLLING UNDER NLRA

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

N.L.R.B. v. Electra-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**
(Bd free to use general contract principles adapted to collective-bargaining context)

3300 FORMATION OF A CONTRACT

3325 OFFER

3325-1700 Must be unequivocal

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(pre-strike agreement on certain contract terms contingent upon resolution of other unresolved major issues is not legally enforceable agreement)

3325-6700 When terminated

3325-6717 Rejection

3325-6717-3300 By counter offer

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

3325-6717-6700 By refusal

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

3350 ACCEPTANCE

3350-0100 Generally

N.L.R.B. v. Electra-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**
(acceptance of final offer of complete bargaining agreement manifests mutual assent and creates binding agreement)

3350-2500 Must embody all the terms

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(pre-strike agreement on certain contract terms contingent upon resolution of other unresolved major issues is not legally enforceable agreement)

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

6700 CONSTRUCTION OF CONTRACT

6717 WRITTEN TERMS OF CONTRACT ARE CONCLUSIVE

6717-3700 Writing is interpreted as a whole and all writings forming part of same transaction are interpreted together

Olinkraft, Inc. **252 NLRB No. 185**
(provision in Supplemental Agreement that E would give U name of subcontractor, date, duration and scope of job refers back to collective bargaining agreement and refers only to new construction as opposed to routine maintenance)

6717-7500 Where words are ambiguous or have more than one meaning they are construed against one who drafted contract

Inta-Roto, Inc. **252 NLRB No. 111**

6733 CONTRACT INTERPRETATION

6733-2000 Interpretation which gives reasonable, lawful, and effective meaning to all manifestations of intent is preferred

6733-2050 Attempt to construe the contract as an implied agreement not to strike

Irvin H. Whitehouse & Sons Company **252 NLRB No. 140**
(contract containing provision requiring disputes to be referred to Joint Local Trade Board for arbitration not found to contain no-strike clause where section concerning safety does not directly state that those disputes be submitted to final and binding arbitration and clause is silent as to fines or remedial actions)

6733-4000 When there is an inconsistency between specific and general provisions, specific will qualify general

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(provision alleged to be violative of 8(e) not rendered lawful by another provision stating *any other exclusions from construction industry proviso, previously defined by NLRB or cts, shall continue to be applicable in interpreting (alleged unlawful provision); explicit self-contained and clearly illegal contractual provision ... will not be purged of illegality by vague and general savings clause*)

6733-8000 Provisions interpreted

6733-8029 Accrued benefits

Vesuvius Crucible Company **252 NLRB No. 179**
(refusal to pay economic strikers vacation pay accrued under expired contract, violative, fact contract limited vacation pay, computed on prior year's earnings, to its term did not free E from responsibility of paying these vacation benefits because they vested in Ees during term of contract and do not divest on expiration)

6733-8038 Subcontracting clause

Olinkraft, Inc. **252 NLRB No. 185**
(provision in Supplemental Agreement that E would give U name of subcontractor, date, duration and scope of job refers back to collective bargaining agreement and refers only to new construction as opposed to routine maintenance)

6750 PAROL EVIDENCE

6750-0100 Generally

Memphis Furniture Manufacturing Co. **252 NLRB No. 025**
(evidence extrinsic to written contract resorted to where contract provision is ambiguous)

6750-2500 Agreements prior to or contemporaneous with an integrated agreement are admissible in evidence

6750-2567 To prove facts rendering agreement void or voidable for illegality, fraud, duress, mistake or insufficiency of consideration

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**

(E's contention that there was mutual mistake of fact as to ending date of payroll period and date inserted in Stipulation for Certification upon Consent Election not grounds for relief because mistake by one party to agreement, where not induced by other falls on party making mistake)

8300 WITHDRAWAL FROM CONTRACT

9100 BREACH OF CONTRACT

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**

(contrary to E's contention that any breaches by it of strike settlement agreements with Us were nothing more than violations of U's private contract rights, Bd held such breaches were w/i cognizance of Act and must be remedied in the public interest; accordingly, since E's violations of agreements denied reinstatement of economic strikers who had done no more than engage in protected concerted activity, E's conduct was unlawfully discriminatory)

737 EVIDENCE

0100 GENERALLY

1400 JUDICIAL AND OFFICIAL NOTICE

1401 GENERALLY

1401-8900 Other

Seafarers International Union of North America, Pacific District, AFL-CIO, and Its Affiliates (American Pacific Container Lines, Inc. (AMPAC)) **252 NLRB No. 105**
(U's request which was filed with ALJ after hearing closed for judicial notice of exhibits from collateral suit of which GC was not party denied where other parties would not have opportunity to be heard as to propriety of taking judicial notice and tenor of matter noticed as moving party did not move to reopen record)

Local No. 3, Electrical Workers (Nixdorf Computer Corporation) **252 NLRB No. 082**
(ALJ's taking judicial notice of credibility findings made in another case held not reversible error, notwithstanding fact that it is generally inappropriate for ALJ to rely on credibility findings made in another case; here, ALJ did not predicate his credibility resolutions on credibility findings in companion case, but rather based his resolutions on demeanor of witnesses and record as whole)

Behring International, Inc. **252 NLRB No. 055**
(Bd took administrative notice of fact that, following close of hearing, a change occurred in leadership of Iran which was E's primary customer at facility involved herein, and left to compliance stage determination of timing and nature of impact of such leadership change on E's operations which E alleged resulted in its closing, as well as period during which Ees would have worked had it not been for E's unlawful layoff of Ees and subcontracting of its operations)

1450 SPECIFIC FACTS NOTICED

1450-0900 Board decisions

Marriott Corporation **251 NLRB No. 180**
(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 155**
(request that ALJ take official notice of Bd's decision in related cases rejected where GC had proceeded in instant case w/o consolidation with said cases and prior to Bd decision in said cases)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(to find U a labor organization)

1450-4500 Federal laws, regulations, decisions, publications, etc.

Central Freight Lines, Inc. **250 NLRB No. 063**
(affidavit of witness who died prior to hearing, admissable to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

1450-7200 Record in prior R proceeding involving same parties

Colorado Aggregate Company, Inc. **250 NLRB No. 169**
(as term *record* is defined in Sections 102.68 and 102.69 of Bd's R/R)

Wright & Lopez of Alabama **250 NLRB No. 051**

Spring City Knitting Company **249 NLRB No. 033**

1450-8100 Record in prior ULP case against same party

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(where E excepted to ALJ's taking official notice of its ULPs in prior case as evidence of E's U animus herein claiming few if any of its management personnel then employed still remained, Bd held E's prior ULPs may be noted as background here)

1450-8900 Other

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(Bd will not consider extrinsic evidence to determine if ambiguous contract provisions were intended to have, or in practice had, illegal effects)

2800 BURDEN OF PROOF

Sierra Vista Hospital, Inc. **249 NLRB No. 066**
(E failed to meet its burden of proving that there was clear and present danger of conflict of interest as result of supervisory participation in positions of authority in nurses' association so as to compromise association's bargaining integrity)

Cashmere Lumber Company **JD-(SF)-93-80**
(burden is on party alleging supervisory status to prove that it, in fact, exists)

2850 BURDEN OF GOING FORWARD WITH PROOF

2850-0100 Generally

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

General Grocer Company **JD-591-80**
(ALJ noted that Bd has not adopted ct established requirement that U has burden of proof to demonstrate some objective justification for discriminatory conduct towards its members; instead, burden of proving violative motives or objectives is on GC)

2850-0800 In objections to election proceeding

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(burden on party urging overturning of Bd decision which refused to set election aside)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(contention by E, in objecting to election, that U had created racially inflamatory atmosphere precluding fair election, rejected, where E failed to *supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election*)

2850-1100 Beginning burden rests on General Counsel

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(Bd has burden of proving that discharge was motivated by anti-U animus)

2850-1133 Discriminatory reason for discharge or other action

Herman Brothers, Inc. **252 NLRB No. 121**
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Kraft Foods, Inc. **251 NLRB No. 006**
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

General Telephone Company of Michigan **251 NLRB No. 099**
(disciplining Ee for harassing two other Ees by various derogatory, threatening and vulgar remarks and spitting at one of them for their not having participated in strike held not violative where GC had not established that conduct was *prima facie* or, *in fact*, protected activity)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

2850-1133—Cont.

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**

(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**

(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual* but *burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one)*

2850-1133-5000 General Counsel may not rely on inferences

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. 098**

(where E's relocation of plant was based on legitimate economic reasons and E was under no legal duty to transfer unit Ees to new location, E's failure to transfer unit Ees while transfering non-unit Ees, not violative, notwithstanding that E did not offer legitimate business reasons for its disparate treatment of unit and not-unit Ees; GC did not claim that disparate treatment was illegally motivated, and it is presumed that an action was taken for lawful reasons, absent evidence of illegality)

2850-1167 Illegality of wage increase

Chester Valley, Inc. **251 NLRB No. 190**

(burden of disassociating anouncement of wage increase from pre-election campaign and thereby making it lawful is on E)

Chester Valley, Inc. **251 NLRB No. 190**

(pre-election granting of wage increases which were appreciably larger than those granted in previous years, unlawful, where E failed to sustain burden of showing that as to Ees receiving more than statutory minimum wage, size of increases was governed by other than pendency of election)

2850-1186 Majority status of incumbent union

Siro Security Service, Inc. **247 NLRB No. 157**

(*burden on GC to establish U does not represent majority of Ees at time of recognition*; however, *GC need not prove with mathematical certainty that U lacked majority support at time of recognition where there is evidence that E unlawfully assisted in U organizational campaign*)

2850-1188 Lawful recognition of incumbent union

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

(GC sustained burden of proving that incumbent U was lawfully recognized, where recognition was granted during pre-election conference at Bd's office, incumbent's numerical majority was not challenged, at time of recognition no R ptn had been filed by rival U or any other U seeking Ee representation, and rival U did not move to intervene in R proceeding)

2850-1190 Refusal to refer

International Longshoremen's Association, Local 1414 **JD-357-80**

(unnecessary that GC demonstrate what specific jobs were available at time of discriminatory refusal to refer, inorder to establish violation)

2850-1700 Burden on party seeking to overturn results of election

Gulf Coast Automotive Warehouse Company, Inc. **248 NLRB No. 058**

(ALJ upon remand from Bd and ct found E failed to show that U engaged in pre-election misconduct involving **Savair** rule which would warrant setting aside results of election)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**

(conclusory allegations are not sufficient to obtain hearing in representation case; losing party bears heavy burden)

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**

(hearing on objections to election not required where E, seeking to void Bd conducted election, did not supply *prima facie* evidence presenting substantial and material factual issues which would warrant setting election aside; E cannot demand evidentiary hearing simply to inquire further into unspecified possible election improprieties)

2850-2200 Failure to sustain burden justifies adverse inference

2850-2201 Generally

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(absence of any legitimate basis for action, of course, may form part of proof of GC's case)

2850-2233 Nonproduction of material evidence in one's possession raises adverse inference

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

2850-3300 Remains with General Counsel if Employer's explanation is reasonable

Blue Bird Body Company **251 NLRB No. 196**

(discharge of active U adherent for *goofing off* not violative where GC failed to prove by preponderance of evidence that discharge was motivated in whole or part by Ee's U activity)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(when E shows legitimate reason for discharge of Ee, burden shifts to GC to prove improper motive moved E to discharge Ee)

N.L.R.B. v. Local 19, Hotel, Motel, Restaurant Employees and Bartenders Union, AFL-CIO **628 F.2d 1357(T) (C.A. 9, 1980)**

(where ALJ's decision to reject E's business justification reason for E's layoff not supported by substantial evidence and record contains no direct evidence of anti-U animous layoff's not violative)

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**

(once E comes forward with legitimate motive for dismissal, burden that discharge was unlawfully motivated, or improper notice contributed to discharge, on Bd; burden of establishing discharge was unlawfully motivated must be met by substantial evidence)

2850-4400 Shifts to respondent union or employer to establish affirmative defense

Fort Vancouver Plywood Company **252 NLRB No. 142**

(once unlawful discrimination has been established, burden is on wrongdoer *as to dimunition of damages --- from the unavailability of a job at (its) plant for some reason unconnected with the discrimination*)

Ohio Masonic Home **251 NLRB No. 059**

(where GC shows that E conducted unlawful interview with Ee who was subsequently discipllined for conduct which was subject of interview, burden of going forward with evidence shifts to E to show that decision to discipline Ee was not based upon information obtained at interview)

Ashcraft's Market, Inc. **251 NLRB No. 025**

(*once objecting petitioner establishes that E has announced new benefits during critical period prior to election, burden shifts to E to establish announcement would have been forthcoming at time even if there was no U campaign*)

East Wind Enterprises **250 NLRB No. 101**

(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**

(ct did not extend rule placing burden upon E to come forward with evidence of legitimate and substantial business justification for its act to alleged violation of Sec. 8(a)(4) of Act, since rule was intended to be limited to Sec. 8(a)(3) violations where discrimination was in issue)

2850-4450 Where employer's actions inherently destructive

Freezer Queen Foods, Inc. **249 NLRB No. 045**

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

2850-5500 Shifts to respondent where prima facie case established

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(1947 amendment of Section *10(c)* of NLRA does not address *in part* or *dominent motive* analysis or allocations of burdens *but* legislative history of such amendment does; E required to make out what is actually affirmative defense to overcome *prima facie* case of wrongful motive)

Kraft Foods, Inc. **251 NLRB No. 006**

(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Siro Security Service, Inc. **247 NLRB No. 157**

(where GC's evidence amounts to prima facie case of nonmajority status of recognized U)

2850-5550 Nondiscriminatory motive must be affirmatively shown by Employer where General Counsel's evidence permits inference of discrimination

Fort Vancouver Plywood Company **252 NLRB No. 142**

(once unlawful discrimination has been established, burden is on wrongdoer *as to dimunition of damages --- from the unavailability of a job at (its) plant for some reason unconnected with the discrimination*)

Kuno Steel Products Corp. etc. **252 NLRB No. 127**

(Es failed to rebut GC's *prima facie* case establishing that Es did not meet their obligation to reinstate economic and unfair labor practice strikers to conditions current at time of strike by showing substantial business justification and thereby violated Act)

Herman Brothers, Inc. **252 NLRB No. 121**

(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(wage increase granted during pendency of R ptn to segment of Ee complement held violative where E failed to overcome *strong presumption of (its) illegality*)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**

(*once finding made that Ee was illegally discharged, assertion that E would have been terminated or laid off in any case is in nature of affirmative defense and burden of proof on Respondent*)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**

(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual* but *burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one*)

2850-5575 Same disciplinary action would have taken place in absence of protected conduct

Red Ball Motor Freight, Inc. **253 NLRB No. 111**

(discharge violative where E failed to meet its burden that absent Ee's protectd activities her discharge would have occurred)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(in *Mt. Healthy* case, 429 U.S. 274 (1977), SCt established two-part test to be applied in dual motivation context; Ee must establish that protected conduct was *substantial or motivating* factor; once this is accomplished, burden shifts to E to demonstrate that it would have reached same decision absent protected conduct)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(absence of any legitimate basis for action, of course, may form part of proof of GC's case)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

2850-6600 Employer has burden of establishing good faith belief in misconduct warranting discharge

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

(*picket line activity is generally protected, and the duty of going forward with evidence of conduct which would remove mantle of statutory protection is upon Respondent if, upon such alleged misconduct, it bases its post-strike employment decisions*)

General Telephone Company of Michigan **251 NLRB No. 099**

(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

2850-6650 General Counsel then has burden of proving misconduct did not occur

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(absence of any legitimate basis for action, of course, may form part of proof of GC's case)

General Telephone Company of Michigan **251 NLRB No. 099**

(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

2850-7000 Employer has burden of establishing existence of objective considerations on which good faith doubt of union's majority is based

Westwood Import Company, Inc. **251 NLRB No. 162**

(*after the expiration of valid collective bargaining agreement, U enjoys a rebuttable presumption that its majority representative status continues; such presumption may be effectively rebutted if E affirmatively establishes either (1) that at time of refusal to recognize U, U in fact no longer enjoyed majority support of unit Ees; or (2) that E's refusal was predicated on good faith doubt based on objective considerations; however, burden of rebutting presumption rests on party who would do so*)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

2850-7600 Burden on employer to establish legitimate business reasons for transfer of work

St. Regis Paper Company **247 NLRB No. 105**

(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

2850-9300 To show net backpay

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

4200 SUFFICIENCY UPON REVIEW

4233 ALJ DECISION IS RECOMMENDATORY ONLY, NOT CONCLUSIVE ON BOARD

4233-2200 Credibility of witnesses, however, primarily for ALJ

4233-2233 'Demeanor evidence'

Service Garage, Inc. **247 NLRB No. 115**

(ALJ's finding of no U animus on E's part based on his observation of E and Ees during hearing but not while testifying is impermissible reliance on conduct not w/i record)

4233-2267 ALJ recommendation entitled to great weight

4233-2267-3300 Especially where reasons stated for believing one witness rather than another

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**

4267 PRESUMPTIONS AND INFERENCES

4267-0100 Generally

Blue Bird Body Company **251 NLRB No. 196**

(*knowledge*, like any other element in case, may be proven by circumetantial evidence if circumstances are such as to support reasonable inference)

4267-2000 Where uncertainty exist as to merits of grievance, issue resolved against party creating uncertainty

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(Bd properly resolved uncertainty in merit of grievance against U which created such uncertainty by unlawful act, through its improper investigation of grievance which made it impossible to determine merits of grievance)

4267-2200 Failure to produce evidence peculiarly within party's knowledge raises adverse inference

Suburban Ford, Inc. **248 NLRB No. 051**

(E's *economic defense* of *business decline* rejected where chose not to introduce into evidence documentation of its annual reports, profits and loss figures etc. or any data for comparative purposes regarding personnel and income levels; failure to introduce such evidence justified inference that it would not support or assist contentions of party who originated them)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**

(failure to produce records showing routineness of raise given Ees which coincided with U activity)

St. Regis Paper Company **247 NLRB No. 105**

(correct to draw adverse inference from Respondent's failure to submit documentary evidence in support of its contention that *transfer of work was economically motivated*)

Frank Briscoe Incorporated **247 NLRB No. 006**

737-EVIDENCE

4267-2700 Failure to comply with subpena raises adverse inference

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. **JD-441-80**
(statutory jurisdiction asserted over Es, w/o regard to whether Es' operations met Bd's jurisdictional standards because Es failed to respond to numerous *subpoenas duces tecum* which sought jurisdictional information and evidence elicited at hearing demonstrated that revenues derived from Es' activities affecting interstate commerce were more than *de minimis*)

4267-3300 Failure to produce material witness raises adverse inference

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(Ee who sought to invoke his *Weingarten* rights)

Memphis Furniture Manufacturing Co. **252 NLRB No. 025**
(no basis found for reversing ALJ's credibility findings, notwithstanding his failure to draw adverse inference from fact U spokesman did not testify, where, in crediting chief U representative and discrediting E's attorney and industrial relations director, ALJ relied on E's minutes of crucial meeting, on nontestifying U spokesman's actions in meeting as shown by minutes, on E's attorney's letter to Bd, and on corroboration by Ee negotiating-team members of U representative's account of negotiations)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(unlawful motivation for layoffs inferred where individual who made selection for layoffs not called)

American Petrofina Company of Texas **247 NLRB No. 015**
(Respondent's failure to produce as witnesses supervisors who could best corroborate testimony as to Charging Party's alleged deficiencies raised inference their testimony would not have corroborated that of other Respondent's witness)

Apollo Management Corporation d/b/a Golden Sails Inn **JD-(SF)-293-80**
(adverse inference warranted where charging party testified that an individual would substantiate her charge that she was discharged for filing workman's compensation claim but said individual did not testify, and in state proceeding also alleging charging party was discharged for filing workman's compensation claim in which individual did testify no liability was imposed on E; further, *production of weak evidence where strong evidence is available can lead only to conclusion that strong would be adverse*)

United Electrical, Radio & Machine Workers of America, Local 262 (Hemisphere Broadcasting, Inc.) **JD-437-80**
(failure to call respondent U's chief negotiator and strategist)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(where E did not produce its president as witness over issue of alleged coercive statements attributed to the president, but rather relied solely on testimony of office manager who stated that he did not recall *many specifics* of what E president said, ct declined to say that Bd's finding of violation *on the basis of credited testimony of several GC witnesses* was *inherently unreasonable or self-contradictory*; it is appropriate to infer that testimony of E president would have been adverse to E's position, since only contrary evidence offered by E was minimal and uncertain)

4267-3800 Offering spurious defense

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(E's assertions that its satisfaction with discharged Ee drastically declined over relatively short period of time and that E made no real effort to attempt to change Ee's work practices back to what they had been is strong evidence of untruthfulness of E's stated reasons for Ee's discharge)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

4267-4000 No presumption of relevancy where union seeks information about employees outside bargaining unit

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(U bears burden of showing that information it seeks concerning Ees outside bargaining unit is relevant to bargaining issues)

4267-4400 Failure to testify concerning crucial point raises adverse inference

Peat Manufacturing Company **251 NLRB No. 153**
(failure to provide testimony regarding E's affirmative defense that Ee, alleged to have solicited U cards, was discharged because he was too frequently away from his machine, warranted conclusion that testimony would not have supported E's defense)

General Teamsters Local 959 (Northland Maintenance) **248 NLRB No. 100**
(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

Albany Steel and Brass Corporation **JD-227-80**
(E's president who notified Ee of discharge)

Gar-Wood Detroit Truck Equipment Company **JD-747-79**
(Charging Party's failure to testify in regard to E's assertion that he voluntary quit rather than was discharged raises inference that he would have affirmed E's position)

4267-7100 Amimus as motive for action

United Broadcasting Company of New Hampshire, INc. d/b/a WMUR--TV **253 NLRB No. 102**
(discharge allegedly for protected activity not unlawful, since GC failed to make *prima facie* showing sufficient to support inference that Ee's protected activity was motivating factor for discharge; only evidence in regard to Ee's protected activity is that he had at one time been employed at unionized operation, and there is no showing of E hostility or animus toward U)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(evidence adduced at hearing as to execution of contract between E and minority U and received before complaint was amended to show preferential treatment to U, admissable to show E animus to petitioner and as bearing on credibility of witness, E's president)

Swift and Company **250 NLRB No. 152**
(supervisor's threat to discharge another Ee along with shifting reasons for discharge and disparate enforcement of rules indicating pretextual reasons for discharge evidence U animus)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(shifting defenses to charge of unlawful discharge during hearing gives rise to inference of unlawful motivation)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual* but *burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one*)

N.L.R.B. v. Pfizer, Inc. **629 F.2d 1272 (C.A. 7, 1980)**
(E's refusal to hire laborer for vacant position where reference check disclosed former E found him to be trouble maker, mentioned his U activities and stated would not rehire Ee not violative where evidence to support finding of E's U animous based on inferences and not supported by substantial evidence)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

4267-7400 Majority status is presumed to survive timely withdrawal from multi-employer bargaining unit

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(rebuttable presumption of majority U support survives Es' withdrawal from multi-E unit is grounded on policy determination by Bd that industrial peace is more likely to be achieved by maintaining continuity in bargaining structure over enhancement of Ee free choice)

4267-7600 Extending superseniority of stewards to areas other than recall or layoff, presumptively unlawful

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**

4267-7900 In settlements, GC will meet its burden of proof in regard to allegations in complaint

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(in order for Bd to consider approval of settlement agreement it must assume that GC will carry its burden of proof with respect to allegations of complaint)

4267-8200 Solicitation of grievances raises influence of corrective action

St. Francis Hospital **249 NLRB No. 017**

4267-8200—Cont.

(at E sponsored grievance meeting with Ees during critical period, E, in response to C, stating that he would *take a look and see what we can do* violated Act because he held out prospect of remedial action)

CTS Keene, Inc. **247 NLRB No. 141**
(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

4267-8800 Miscellaneous

Pennypower Shopping News, Inc. **253 NLRB No. 011**
(where E created ambiguity and failed to clarify it, burden of results of that ambiguity must fall on E)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(after her reinstatement, Ee's being assigned full time to arduous machine work when she had shared time on machine with other Ees and being denied same lunch break given other Ees in department held violative, since inference was warranted that Ee was being made to suffer for her concerted action and U activities)

Behring International, Inc. **252 NLRB No. 055**
(in determining agency relationship, it is not necessary to find direct evidence that anti-U activities of Ees were authorized or subsequently ratified by E, since agency may be inferred from circumstances)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(adverse inference warranted where E's interrogation of Ee failed w/o explanation to testify as to alleged unlawful interrogation)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(concerted refusal to work overtime presumptively protected where there was no bargaining relationship, only inchoate relationship with U which did not provide *structured procedures* for conflict resolution)

P.M.S. West, Inc. **JD-(SF)-47-80**
(small plant doctrine standing alone does not impute knowledge of U activity to E; there must be some direct evidence to support inference)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(from totality of evidence concerning circumstances of bargaining, Bd could rationally infer E had not bargained in good faith as required by Act)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(U's receipt of a receipt for certified mail sent to E establishes presumption that E received letters)

5600 WITNESSES

5601 GENERALLY

Behring International, Inc. **252 NLRB No. 055**
(contention that witness who was severed by E was disgruntled witness and therefore should not be credited, rejected, where witness' testimony was consistent with general fact pattern of case, and his testimony adverse to E was inconsistent with his interest in receiving hospitalization benefit payment from E)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(GC had no obligation to call as witnesses a newspaper reporter and police officer who were present at picketing by Ees, and no presumption should be made because he failed to do so; neither person was employed by GC or was otherwise shown to be under his control, and E was in as good position to subpoena the two as was GC)

Hedison Manufacturing Company **249 NLRB No. 096**
(Bd held ALJ, while fully warranted in precluding E's official from testifying because he refused to comply with subpoena and to testify, erred in precluding E from calling witnesses other than official; since E's asserted reasons for discharges involved herein must rest upon testimony of witnesses as to relevant events, *best evidence* rule involved in cases relied on by ALJ held not applicable to discharges; accordingly, Bd severed and remanded discharge cases to ALJ for supplemental decision)

5601-1600 Witness claiming constitutional privilege against self incrimination

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**
(upon not crediting witness because he was found unreliable and untrustworthy, ALJ found it unnecessary to strike witness' testimony on direct examination because he claimed privilege against self-incrimination on cross-examination; respondent's motion for receipt of certain documents pertaining to interlocutary appeal from ruling in connection with witness' claim of privilege, granted)

5650 CREDIBILITY

Behring International, Inc. **252 NLRB No. 055**
(contention that witness who was severed by E was disgruntled witness and therefore should not be credited, rejected, where witness' testimony was consistent with general fact pattern of case, and his testimony adverse to E was inconsistent with his interest in receiving hospitalization benefit payment from E)

5650-0100 Generally

B. E. & K., Inc. **252 NLRB No. 036**
(weight given to actual sworn testimony, and credited, over stipulated testimony to same effect)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(where parties waived hearing and submitted case to ALJ for issuance of decision based on record in related proceeding for 10(j) inj and, consequently, ALJ based credibility findings on factors other than demeanor, Bd independently examined case record and found no basis for reversing ALJ's credibility determinations or his findings of fact based thereon)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**
(respondent's motion to expunge portion of ALJ's decision or alternatively to reopen the record and submit supplemental brief, denied because in that portion of ALJ's decision, ALJ's discussion regarding counsel for respondent goes to his credibility, which impacts on credibility of other witnesses in case)

C-F Air Freight, Inc. **247 NLRB No. 060**
(inaccuracy of recall of dates considered not impediment to veracity of any witness; instead, credibility resolutions based on ability of witnesses to recall events, demeanor of each witness, weight of respective evidence provided by witness, established or admitted facts, and inherent probabilities and reasonable inferences)

Dravo Corporation, Chris & Shaver Division **247 NLRB No. 064**
(Bd's established policy is not to overrule hearing officer's credibility resolutions unless they are clearly in error)

5650-0900 Corroboration

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

5650-1500 Uncontradicted testimony

General Teamsters Local 959 (Northland Maintenance) **248 NLRB No. 100**
(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

National Steel Service Center, Inc. **JD-395-80**
(*trier of fact may find facts contrary to those presented by uncontradicted witness*)

5650-2400 Employment relationship not sufficient to disregard testimony

Pittsburgh Press Company **252 NLRB No. 075**
(fact that witness testified adversely to E's interest at time she was still Ee o
E tended to support witness's credibility)

5650-3700 Failure to credit some testimony does not justify rejection of witness' entire testimony

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 08**

B. N. Beard Company **248 NLRB No. 01**

C-F Air Freight, Inc. **247 NLRB No. 06**

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 04**
(nothing is more common in all kinds of judicial decisions than to believ
some and not all of a witness' testimony).

National Steel Service Center, Inc. **JD-395-8**

5650-4300 Failure to testify concerning crucial point may be considered

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 14**

5650-4300—Cont.

(failure of respondent's attorney to ask one of his witnesses to testify concerning important matter reinforced ALJ's finding of lack of credibility of witness)

General Teamsters Local 959 (Northland Maintenance) **248 NLRB No. 100**

(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

5650-4900 Impeachment

5650-4910 For criminal activity

5650-4910-2500 Only for felony or misdemeanor convictions involving deceit or falsification

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**

(in supplemental hearing, testimony of Ee credited, notwithstanding his prior criminal conviction for illegal possesion of drugs, where evidence revealed but single conviction of Ee occurring some 6 years before original hearing herein and concerning type of misconduct which would not necessarily support inference of tendency to testify dishonestly under oath)

5650-4910-5000 Convictions before hearing

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**

(in supplemental hearing, testimony of Ee credited, notwithstanding his prior criminal conviction for illegal possesion of drugs, where evidence revealed but single conviction of Ee occurring some 6 years before original hearing herein and concerning type of misconduct which would not necessarily support inference of tendency to testify dishonestly under oath)

5650-4940 Contradictory statements

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

5650-5500 Miscellaneous grounds for discrediting testimony

General Telephone Company of Michigan **251 NLRB No. 099**

(witness using such terms as *felt that* and *to the effect that* renders uncertain content and import of his remarks)

Thermo King Corporation **247 NLRB No. 048**

(GC's witnesses not credited where their testimony lacked consistency and logic and was undermined by their own statements, principal witness was evasive and reluctant to testify and in some instances his testimony was contrived or fabricated, and review of entire testimonial record and briefs coupled with due regard for logic of probability, demeanor of witnesses, and S Ct's Walton Mfg decision were basis for credibility resolutions herein)

5650-6900 Self-serving nature of testimony affects credibility

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

5650-7500 Testimony of witnesses whose statements are lost or destroyed need not be struck

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

(Bd did not strike testimony of GC's witness where respondent did not allege bad faith on part of GC and presented no evidence to establish that it was prejudiced by failure to produce alleged statement where such statement has been destroyed or lost in good faith)

5650-7800 Testimony against employer by employee while in employ of employer not likely false

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**

(Ee who testified adversely to E concerning alleged E ULPs, not credited, even though she was still in E's embloy; while individual's act in testifying against own pecuniary interests tends to support reliability of individual as witness, in present instance witness was friend of charging party and was closely aligned with her in internal U matters; while such factors by themselves do not serve as basis for rejecting witness' testimony they tend to show that she was not disinterested in disposition of charging party's case)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**

Chef's Pantry, Inc. **247 NLRB No. 018**

Retailer's Coupon Redemption Co., Inc. **JD-194-80**

6300 WEIGHT AND SUFFICIENCY

6301 GENERALLY

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(contention that increased initiation fee restrained applicants from accepting jobs with E rejected; evidence of increase in ratio of number of interviews of applicants to number of jobs filled by E valueless where E failed to give basis for his figures or describe records he consulted to refresh his recollection)

B. E. & K., Inc. **252 NLRB No. 036**

(weight given to actual sworn testimony, and credited, over stipulated testimony to same effect)

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**

(U's quiescence--when it heard that E did not agree with U that E and U had reached agreement on terms of contract--found not evidence that U concurred with E, where U members ratified the agreement that U claimed had been reached and so notified E, and E acted in accordance with contractual terms that U claimed they had reached agreement on)

Carbonex Coal Company **248 NLRB No. 107**

(ALJ's refusal to accept into evidence summaries of E's economic condition at time it instituted layoffs, since that information was not available to E at time it made its decision, reversed by Bd because this factor goes to weight to be accorded evidence not its admissibility)

6375 NONPARTY STATEMENTS

Six Flags Over Mid-America, Inc. **253 NLRB No. 013**

(less weight to be accorded to conduct of rank-and-file Ees than that of parties to election in considering election objections)

7000 SPECIFIC KINDS OF EVIDENCE

7006 ADMISSIONS

7006-3700 By affidavit

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

Wolverine World Wide, Inc. **JD-185-80**

(pretrial statements adduced to impeach witnesses may be used as affirmative evidence, especially where statements contain admissions or declarations against interest)

7012 AFFIDAVITS

7012-2500 Of witnesses who did not testify

Central Freight Lines, Inc. **250 NLRB No. 063**

(affidavit of witness who died prior to hearing, admissable to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

7015 BUSINESS RECORDS

Carbonex Coal Company **248 NLRB No. 107**

(ALJ's refusal to accept into evidence summaries of E's economic condition at time it instituted layoffs, since that information was not available to E at time it made its decision, reversed by Bd because this factor goes to weight to be accorded evidence not its admissibility)

7018 CIRCUMSTANTIAL EVIDENCE

7018-3300 Direct evidence of purpose to violate statute seldom obtainable

Blue Bird Body Company **251 NLRB No. 196**

(*knowledge*, like any other element in case, may be proven by circumetantial evidence if circumstances are such as to support reasonable inference)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**

(*direct evidence of discriminatory motivation is not necessary to support finding of discrimination and such intent may be inferred from record as a whole*)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(state of mind of E officials who make decision to discharge Ee reflects motive for discharge; GC will rarely be able to produce direct evidence of official's state of mind and therefore GC can only produce circumstantial evidence from which Bd can infer finding of improper motive)

7018-6700 Sufficient in light of absence of rebuttal

Douglas & Lomason Company **253 NLRB No. 039**

(although it was not certain that it was supervisor who posted anti-U petition, there was sufficient circumstantial evidence to make that likely; his failure to rebut that necessary inference was persuasive to find violation)

7024 EVIDENCE RELATING TO PARTICULAR EVENTS OR FACTS

7024-3300 Events occurring before ULP alleged in complaint may be given weight

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**

(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

7024-3375 Settlement agreements not admissible

East Wind Enterprises **250 NLRB No. 101**

(letter from E's counsel to GC written during course of settlement negotiations and was part thereof, inadmissable; See, *Federal Rules of Evidence, Rule 408*)

7024-3900 Events occurring prior to filing of petition

Blue Bird Body Company **251 NLRB No. 196**

(prepetition conduct may be considered in determining whether party has engaged in objectionable conduct where such prepetition conduct lends *meaning and dimension* to post-election conduct)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**

(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**

(although E's speech to Ees emphasizing strikes, plant closing, and loss of jobs resulting from unionization was made prior to filing of operative ptn and cannot serve as basis for setting aside election, it was considered insofar as it provided background in evaluating E's post-ptn conduct)

7024-4200 Offers of settlement or compromise

East Wind Enterprises **250 NLRB No. 101**

(letter from E's counsel to GC written during course of settlement negotiations and was part thereof, inadmissable; See, *Federal Rules of Evidence, Rule 408*)

7024-5000 Facts established at hearing before other agencies

7024-5033 Arbitration tribunal

Classic Truck Rental Corp. **251 NLRB No. 056**

(contrary to ALJ, Bd did not rely on contents of mediation arbitrator's letter, advising E to suspend Ee, in finding that E's disciplinary action against Ee was not unlawful, since Ee's misconduct provided sufficient cause for disciplining Ee)

7024-6700 Facts established at hearing in other Board cases

7024-6717 Admission and decision based thereon not conclusive

Marriott Corporation **251 NLRB No. 180**

(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

7024-6783 Where present parties were parties to earlier proceedings

Standard Refinery Union, Inc. **JD-632-80**

(determination of correctness or incorrectness of name of E made in prior Bd cases concerning same E was controlling in instant case by virtue of Bd's denial of respondent U's request for review as regards such determination)

7024-8500 Majority status of union

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

(in 8(b)(7)(A) proceeding, U's evidence tending to show that incumbent U's majority may have been tainted and not uncoerced held insufficient to rebut conclusion that incumbent had been lawfully recognized; U's evidence of sporadic substitution for supervisors by Ees participating in U activities, supervisor's election to U office, apparent acceleration of dues checkoff, and brief nature of, and rapidly concluded, negotiations had little probative value in support of U's contentions)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

7024-8800 Objective evidence of card majority

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(secondary evidence is sufficient to establish identity of card signer and his/ her act of signing card; witness providing such secondary evidence need not have actually seen Ee sign card so long as he can identify the card as having been executed by signatory Ee)

Montgomery Ward & Co., Inc. **253 NLRB No. 02**

(*fact card undated does not destroy its validity. Collateral evidence may be relied upon to establish when undated card was signed and such evidence may include officially noticed Regional Office time and date stamps if card was submitted t Bd in support of R ptn*)

Montgomery Ward & Co., Inc. **253 NLRB No. 02**

(right to question validity of authorization cards not waived by failure t object to authenticity of cards and their admission into evidence; further where issue of validity of cards raised and litigated by cross-examination o authenticating witnesses and discussion in brief of testimony regarding possi ble misrepresentation in solicitation, validity of cards should be considere on merits)

Tartan Marine Company **247 NLRB No. 07**

(lost card not counted since w/o card it cannot be determined if individua authorized U to represent him on any of the critical dates litigated)

7024-8900 Subjective motivation in signing card

Carlina Knitting Co., Inc., et al. **JD-321-8**

(subjective testimony adduced at hearing held unreliable and does not prov that Ees, when they signed card, did not want U, or that they were tricke into signing cards)

7036 EXPERT KNOWLEDGE OF BOARD

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 198**

(Bd has special expertise in classifying *mandatory* and *non-mandatory* subjec of bargaining; Congress delegated primary responsibility of defining scope duty to bargain to Bd)

7042 HEARSAY

7042-0100 Generally

7042-0120 What constitutes hearsay

Capriccios Restaurant, Inc. **249 NLRB No. 1**

(testimony of E that detective told him that discriminatee had been accus of harassing a pregnant woman held not hearsay, where it was not be offered for truth of matter being asserted by detective but rather was offer to show basis for E's fear of discharging discriminatee before E's departu overseas, as result of which his pregnant wife would be left alone)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 1**

(although testimony of general contractor and party in interest herein garding his own statements made to various subcontractors in course of attempts to get them to schedule work at jobsite was not hearsay, Bd h general contractor's testimony regarding responses made by the subcontr tors was self-serving hearsay)

7042-0160 Hearsay may be excluded

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18**

(testimony of witness, who was nonstriking Ee, concerning what his c dren reported to him regarding phone call they had received allegedly m by striking Ee who threatened witness' family excluded as hearsay and h not w/i exception to hearsay rule, since it did not have equivalent circu stantial guarantee of trustworthiness necesary for admission)

7042-0180 Hearsay may be given weight

7042-0180-2500 Where admitted without objection

Avon Mirror & Distributing Co. **247 NLRB No.**

7042-0180-5000 Where corroborated

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No.**

(testimony of general contractor and party-in-interest herein regarding sponses made by various subcontractors in course of his attempts to them to schedule work at jobsite, held self-serving hearsay not to be g significant weight, since testimony was not corroborated, either by testim from subcontractors involved in conversations or by any documentary dence)

7042-0190 Exceptions to the hearsay rule

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**

(contention that conversation between E and International U was inadmissible because International was not party to proceeding, rejected, where testimony of conversation was admissible since it went to E's state of mind in reaching decision to terminate Ee)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**

(testimony of witness, who was nonstriking Ee, concerning what his children reported to him regarding phone call they had received allegedly made by striking Ee who threatened witness' family excluded as hearsay and held not w/i exception to hearsay rule, since it did not have equivalent circumstantial guarantee of trustworthiness necesary for admission)

7042-2500 Admission against interest not within hearsay rule

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

7042-7500 Testimony as to witness' own conversations not hearsay

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**

(although testimony of general contractor and party in interest herein regarding his own statements made to various subcontractors in course of his attempts to get them to schedule work at jobsite was not hearsay, Bd held general contractor's testimony regarding responses made by the subcontractors was self-serving hearsay)

7042-8700 Statements of deceased persons or persons too ill to testify

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

(*ex parte* affidavit of deceased declarant admissible, notwithstanding Respondent's contention it was not advised of particulars of affidavit as required by Federal Rules of Evidence 804(b)(5) since GC met requirement by having advised Respondent in writing that it intended to use affidavit to support allegations of complaint including unlawful suspension of declarant)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

(*ex parte* affidavits of deceased declarant admissible under Federal Rules of Evidence 804(b)(5) hearsay exception where statement corroborated by testimony since ct has discretion to admit such affidavits where necessity for receipt is shown and affidavit consistent with circumstantial evidence)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

(*ex parte* affidavits of deceased declarant admissible under Federal Rules of Evidence 804(b)(5) hearsay exception where statement corroborated by testimony since ct has discretion to admit such affidavits where necessity for receipt is shown and affidavit consistent with circumstantial evidence)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**

(Bd may consider as evidence statements of persons who are deceased, but such evidence must be scrutinized with great care)

7051 IMMATERIAL OR IRRELEVANT EVIDENCE

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**

(dispute between GC and U as to whether exclusion of certain individuals at certain locations from coverage by contract in question constituted disclaimer of interest by U in representing those individuals found irrelevant to proceeding concerning dispute as to whether U and E had reached agreement on terms of contract from whose coverage said individuals were excluded)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**

(*relevancy* in cases should be determined under *discovery-type standard* where cts *of necessity must follow a more liberal standard as to relevancy*)

7054 OFFER OF PROOF

Healdsburg General Hospital **247 NLRB No. 030**

(E's offer of proof did not meet its *heavy burden* of showing *direct* conflict of interest disqualifying nurses association from acting as Ee representative on ground association is subject to control by supervisor-members; there was no evidence that any member of association's board of directors could influence board to advance competitive position of any E as against E, and there was no proof of possible financial conflict of interest between association and E or that presence of supervisory nurses of other Es in positions of authority conflict with E's interests)

7060 OPINION EVIDENCE (NONEXPERT) MAY BE GIVEN WEIGHT

Service Garage, Inc. **247 NLRB No. 115**

(witnesses may not testify to matters outside their personal knowledge nor give opinions unless based on their own perception so that ALJ's reliance on Ee-witness's lack of testimony that he had been laid off for U activity is improper)

7078 STIPULATIONS

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(E's stipulation regarding supervisory status of Ee, as to whom there was little evidence in regard to his duties or position, given very little weight, where GC was not party to stipulation and, in this instance, it would not be admission against interest)

7078-5000 Effect of stipulation on stipulating parties

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(E's contention that its stipulation in R case, that Ee was supervisory is not binding on ALJ in instant ULP case and that E should not be responsible for Ee's anti-U conduct, rejected; while this was clearly so insofar as instant ULP case did not involve eligibility to vote, stipulation was received in evidence w/o objection and was treated as substantive evidence; as to Ee, it was treated as admission against interest as to Ee's status)

The Salvation Army of Massachusetts Dorchester Day Care Center **247 NLRB No. 062**

(Bd held stipulation specifying that E is engaged in commerce w/i meaning of Act did not foreclose inquiry by Bd to determine whether assertion of jurisdiction would be contrary to Bd's jurisdictional policy)

7084 STATEMENTS OF WITNESSES TO COUNSEL OR BOARD AGENT IN PREPARATION OF TRIAL

7084-0100 Generally

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

7084-7000 Rules & Regulations 102.118

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

(Bd agent writing something while witness spoke and nothing more did not qualify as statement w/i R/R 102.118(d))

7087 STATISTICAL DATA

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(contention that increased initiation fee restrained applicants from accepting jobs with E rejected; evidence of increase in ratio of number of interviews of applicants to number of jobs filled by E valueless where E failed to give basis for his figures or describe records he consulted to refresh his recollection)

7096 TAPE RECORDINGS

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

(exclusion of surreptitiously recorded tapes offered in evidence in instant case, held proper, since the tapes were concerned with collective bargaining and thus fall squarely w/i rule established by Bd in *Carpenter Sprinkler Corporation*, 238 NLRB No. 139)

Levi Strauss & Company **JD-158-80**

8400 ADMISSIBILITY

8401 GENERALLY

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(E's exhibits containing written and video-tape instructions prepared by E's counsel and given to supervisors concerning their obligations under labor law held admissible and copies thereof should be provided to GC and U; although exhibits deal essentially with compliance matters, they are useful in providing a full record)

8401-1600 Effect of form and order of evidence offered

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

8401-2500 Authentication of documents

Stanley M. Feil, Inc. **250 NLRB No. 065**

8401-2500—Cont.

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(where authorship of document in dispute, there was inadequate foundation for their admissibility)

8401-4400 Limitation of purpose of evidence

Chester Valley, Inc. **251 NLRB No. 190**
(GC's failure to limit purpose for which he offered letter which stated that E had decided to give Ees wage increase on specified date required that letter be given its natural probative effect)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(Bd will not consider extrinsic evidence to determine if ambiguous contract provisions were intended to have, or in practice had, illegal effects)

8401-5000 References to state court proceeding

Local 157, Plumbers (Local 204, Laborers) **248 NLRB No. 032**
(E's mtn to strike from U's brief all references to state ct proceeding, denied, since the fact that such references concern state ct proceeding involving different legal issues goes to their weight and not their admissibility)

8401-6600 Parole evidence

Schorr Stern Food Corp. **248 NLRB No. 050**
(in backpay proceeding E held precluded from presenting evidence regarding modification of contract, since such evidence would be immaterial and Bd had adjudicated issue in question in ULP proceeding herein)

8401-8400 Affidavit of decedent

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(*ex parte* affidavit of deceased declarant admissible, notwithstanding Respondent's contention it was not advised of particulars of affidavit as required by Federal Rules of Evidence 804(b)(5) since GC met requirement by having advised Respondent in writing that it intended to use affidavit to support allegations of complaint including unlawful suspension of declarant)

Central Freight Lines, Inc. **250 NLRB No. 063**
(affidavit of witness who died prior to hearing, admissable to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

8433 EXCLUSION OF EVIDENCE

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(E's exception to exclusion by ALJ of certain evidence it sought to admit into record, overruled, where proffered evidence was not relevant to issues in case and E was not prejudiced by its exclusion)

8433-0100 Generally

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**
(GC's contention that journeyman's test given referral applicants for electricians' jobs was unfair and discriminatory, rejected, where electrician with considerable experience testified test was fair notwithstanding his failure to pass test; GC's attempt to introduce other examinations into evidence to show that, perhaps, instant examination was more difficult held entirely irrelevant in view of electrician's testimony)

8433-0150 Prejudicial exclusions only significant

8433-0150-5000 No prejudice where excluded evidence is immaterial

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(ALJ did not err in refusing to admit exhibits of documents which E contended contained false or maliciously false statements against it and were distributed in violation of its rule prohibiting distribution of such material, since falsity or malicious falsity of documents irrelevant where rule which E attempted to enforce overbroad since it prohibited distribution of merely false documents)

8433-3300 Subjects improperly excluded

8433-3333 8(a)(1) or (2)

8433-3333-5900 Evidence in 8(b)(7)(A) proceeding designed to establish employer's unlawful assistance and/or domination of incumbent union

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(evidence relating to E's assistance to, and/or domination of incumbent U not precluded, where such evidence is not designed to establish existence of 8(a)(2) violation but, rather, is proffered as defense against assertion tha incumbent U was lawfully recognized; it is inequitable to conclude U precluded from litigating a legal defense, and U's evidence is directly addressed to words of Act placing burden on GC to prove 8(b)(7)(A) violatio by showing *lawful recognition* was granted to incumbent U)

8433-6700 Subjects properly excluded

8433-6712 8(a)(3)

8433-6712-5000 That employer had made unconditional offer of reinstatement

Charles H. McCauley Associates, Inc. **248 NLRB No. 04**
(ALJ's ruling to exclude evidence of E's alleged unconditional offer reinstatement, appropriate since issue of alleged offer of reinstatement matter best raised during compliance stage of the proceeding)

8433-6718 8(a)(5)

8433-6718-2500 Evidence relating to continuing union majority

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 198**
(refusal to allow E to introduce into evidence U's membership list obtaine after withdrawal of recognition improper, notwithstanding membership n correlative with U support, since low membership is *clearly probative* to issu of U's continued majority and admissibility is not determined solely by wha evidence E could have relied on upon in making decision to withdra recognition)

8433-6724 Hearsay

First Termite Control Co., Inc. **247 NLRB No. 1**
(freight bills made out by railroad and in custody of E held to have ind of trustworthiness required by Federal Rules of Evidence for admission hearsay evidence and therefor not excluded for purposes of showing E m legal jurisdictional standard)

8433-6724-5000 Exception because of *circumstantial guarantees of trustworthiness* under Federal Rule of Evidence 804

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 1**
(no exception)

8433-6727 Subjective evidence concerning prior state of mind

Flagler Memorial Park **247 NLRB No. 2**
(hypothetical testimony relating to effect of previously unknown U constit tional provisions on minds of voters relating to their actions 3 years befor rejected as wholly unreliable)

8433-6762 Records and testimony of Board representative

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 198**
(Bd properly upheld quashing subpoenas directed to field examiner wi respect to his alleged statement that ULP charges would probably be d missed, where others were present during conversations with field examin and Es showed no reason why examining these people was not possible would not have produced information similar to that which they soug from field examiner; moreover, there was doubt whether information soug was sufficiently material to Es' case to outweigh investigatory privileg

8433-6764 Subject matter beyond scope of hearing

C.J.B. Industries **250 NLRB No. 1**
(contention that evidence of unlawful motive in hiring should not have be considered with respect to 8(a)(5) claim because no allegation or finding th E violated 8(a)(3) was made held w/o merit, since claim was based up alleged successorship obligation, and element of continuity or work for between predecessor and successor is critical; GC must show either that hired or retained requisite complement of former Ees *or* that it decided n to hire former Ees because of their U affiliation)

8433-6775 Testimony of or concerning government conciliators

N.L.R.B. v. Joseph Macaluso, Inc., d/b/a Lemon Tree **618 F.2d 51 (C.A. 9, 198**
(subpoena of Federal Mediation and Conciliation Service mediator prope revoked where E sought mediator's testimony regarding bargaining sessio since *public interest in maintaining perceived and actual impartiality of Fede Mediators does outweigh benefits derivable from testimony*)

8467 EVIDENCE RELATING TO EVENTS BARRED BY 6-MONTH LIMITATION

8467-3300 Admissible for background purposes

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 1**
(while U representative's conduct outside 10(b) period may be used ascertain his motive for action taken w/i such period, it is not to be infer that he was motivated by unlawful considerations in his refusal in inst case to refer non-U applicants, in absence of evidence demonstrating that actions herein were mere continuation of his prior conduct)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No.**

8467-3300—Cont.

(U's failure to refer alleged discriminatees outside 10(b) period admissible as evidence of animosity and as background to support finding of unlawful refusal to refer w/i 10(b) period)

8467-6700 Admissible to test credibility of witnesses

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(evidence adduced at hearing as to execution of contract between E and minority U and received before complaint was amended to show preferential treatment to U, admissable to show E animus to petitioner and as bearing on credibility of witness, E's president)

750 RES JUDICATA

0100 GENERALLY

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**

Charmer Industries, Inc. **250 NLRB No. 031**
(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

Schorr Stern Food Corp. **248 NLRB No. 050**
(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

2500 FORMS OF APPLICATION

2533 COLLATERAL ESTOPPEL - SUBSEQUENT PROCEEDING BASED ON DIFFERENT CAUSE OF ACTION

International Brotherhood of Electrical Workers, Local 453 (Southern Sun Electric Corporation) **252 NLRB No. 103**
(Bd not prevented from litigating case between same parties with different issues and time periods involved)

Wonder Markets, Inc. **249 NLRB No. 042**
(although discriminatee was involved in an incident that justified discharge of another Ee in previous cause of action, Bd rejected theories of *res judicata* and collateral estoppel as bars to relitigating reinstatement issue in the instant backpay proceeding where discriminatee was not party to previous ULP hearing and instant case involved different issue which Ee is entitled to litigate as matter of due process)

N.L.R.B. v. Markle Manufacturing Company of San Antonio **623 F.2d 1122 (C.A. 5, 1980)**
(doctrine of collateral estoppel did not preclude Bd from determining whether E committed ULPs by failing to reinstate economic strikers who allegedly committed charged violence where fact issue of such misconduct was not determined in previous case, in which Bd acting on E's complaint charging strike violence and misconduct by U agents, entered consent order agreed to by E and U that directed cessation of strike violence; moreover, Bd was not barred from litigation of violence issue on theory that Bd was taking inconsistent positions with respect to same matter in successive suits)

2550 COLLATERAL ESTOPPEL SUBSEQUENT PROCEEDING BASED ON SAME CAUSE OF ACTION

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

5000 EFFECTS OF APPLICATION

5032 NOT OPERATIVE WHERE PARTIES ARE DIFFERENT

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(decision in 301 suit not res judicata where although ULP charges were pending alleging unauthorized checkoff of U dues neither NLRB or Charging Parties were parties to suit, Ees from whose pay dues were allegedly unlawfully withheld failed to appear; nor did ct express desire to dispose of ULP issue)

Wonder Markets, Inc. **249 NLRB No. 042**
(although discriminatee was involved in an incident that justified discharge of another Ee in previous cause of action, Bd rejected theories of *res judicata* and collateral estoppel as bars to relitigating reinstatement issue in the instant backpay proceeding where discriminatee was not party to previous ULP hearing and instant case involved different issue which Ee is entitled to litigate as matter of due process)

5087 OPERATIVE ONLY AGAINST SAME PARTY INVOLVED IN PRIOR CASE

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(decision in 301 suit not res judicata where although ULP charges were pending alleging unauthorized checkoff of U dues neither NLRB or Charging Parties were parties to suit, Ees from whose pay dues were allegedly unlawfully withheld failed to appear; nor did ct express desire to dispose of ULP issue)

Standard Refinery Union, Inc. **JD-632-80**
(determination of correctness or incorrectness of name of E made in prior Bd cases concerning same E was controlling in instant case by virtue of Bd's denial of respondent U's request for review as regards such determination)

7500 FINDINGS OF OTHER TRIBUNALS BASED ON SAME EVIDENCE NOT BINDING ON BOARD

762 LACHES

0100 GENERALLY

2000 ELEMENTS OF LACHES

4000 POSSIBLE EXCUSES FOR DELAY

6000 COMPLAINANT NORMALLY WOULD BE BARRED IF APPLICABLE STATUTE OF LIMITATIONS IN ANALOGOUS SITUATIONS HAS RUN

8000 NOT AVAILABLE AGAINST BOARD

775 WAIVER

1200 MAY BE VERBAL OR IN WRITING

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(U by signing strike amnesty agreement effectively waived right to discipline Ees for crossing picket line where agreement prohibited reprisals against Ees who worked for E during strike)

2500 MAY RESULT FROM IMPLICATION OR USAGE

Aeronca, Inc. **253 NLRB No. 026**
(E's unilateral discontinuance of long standing practice of giving turkey bonus to Ees at Christmas w/o bargaining with U held violative where U had not waived its right to bargain over matter notwithstanding that contract contained broad *zipper* clause and no *maintenance-of-benefits* clause; contention that provisions in contract constituted waiver by U refuted by extensive past bonus practice)

3700 ASSENT MUST BE CLEAR, IT WILL NOT BE INFERRED FROM DOUBTFUL LANGUAGE OR FACTS

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(waiver over particular subject matter must be shown to be clear and unmistakable; in absence of explicit waiver language in contract, Bd requires probative extrinsic evidence that parties intended waiver)

National Car Rental System, Inc. **252 NLRB No. 027**
(contract's *zipper clause* waiving parties' bargaining rights over subject matter not included, or referred to, in contract or w/i contemplation or knowledge of parties when they negotiated agreement held not waiver of effects of E decision to sell and relocate operations, since general *zipper clause* did not amount to *clear specific and unmistakable waiver* by U of right to be consulted regarding effects of elimination of all unit positions)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

5000 WAIVER OF PROCEDURAL PROVISIONS

6200 APPLICABILITY TO BOARD

7500 ELECTION OF REMEDIES (ANALOGOUS TO WAIVER)

8700 WAIVER OF PROTECTED RIGHTS

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

8718 RIGHT TO REINSTATEMENT AND/OR BACKPAY

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(dischargees' statement at hearing that they did not wish to return to work for E held not to constitute waiver of right to reinstatement, since questions which led to responses were not valid offers of reinstatement, and E had not otherwise offered them reinstatement)

Newspaper Printing Corporation **JD-203-80**
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

8725 RIGHT TO STRIKE AGAINST ULP MAY BE WAIVED BY EXPLICIT CONTRACTUAL PROVISION

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 0**
(discharge and failure to reinstate Ees who struck E, contrary to contractu no-strike clause, to protest failure of U's health and welfare fund to fulfill contractual medical insurance obligations held violative, since *no-stri* pledge relied upon by E did not constitute clear and unequivocal waiver Ees' right to strike against actions of third party (*Fund*) which affect terms and conditions of employment)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 0**
(U cannot waive Ees' right to strike over issue of medical payments from fund to insurance carrier by *ad hoc* statements of purported intent of colle tive bargaining agreement in view of essentially conflicting interests of and Ees regarding Fund)

Andersen Sand & Gravel Company **JD-655-**
(held ULP strike where Ees of 1 U struck to protest hiring of Ees represe ed by different U who were not subject of contract of first U and unilaterally contracting with outside U for work claimed by first U, notwi standing no-strike clause and U representative attempt to get Ees back work and statement that walkout violated contract)

8731 RIGHT TO BARGAIN OVER MANDATOR SUBJECTS

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 0**
(defense of *waiver* not available to E where E granted unit Ees merit wa increases, percentage wage increases, and extra paid holiday w/o giving sufficient opportunity to bargain over those unilateral changes which wanted to do, E and U had made no attempt to bargain on any econon issue during initial negotiations, hence neither party could contend t impasse had been reached justifying unilateral action)

National Broadcasting Co., Inc. **252 NLRB No.**
(E's refusal to bargain over its saving plan being part of collective barga ing agreement, violative, as it is mandatory subject of bargaining; moreov U did not waive its right to bargain over plan where E made brief refere to plan in response to U question and made clear to U that plan o available to non-U Ees notwithstanding U failed to press for savings pla that time)

National Car Rental System, Inc. **252 NLRB No.**
(U's failure to specifically request *effects* bargaining when it learned of and relocation of segments of E's rental operations not waiver of U's ri to effects bargaining where E's announcement that entire unit was b terminated precluded U request to bargain; E had indicated that any atte at bargaining would have been futile)

Dial Tuxedos, Inc. **250 NLRB No.**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insura benefits after contract containing provisions for E contributions to U's he plan and insurance fund had expired, held violative, where U had waived its right to bargain *on the health and insurance issue*; no *impasse* been reached; and change in benefits was not consistent with any previo rejected offer)

8750 FAILURE TO OBJECT TO ELECTION NO WAIVER OF PREELECTION ULP'S

Connecticut Foundry Company **247 NLRB No.**
(E who signed agreement in which U agreed that *We will not restrai coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* conventional request to proceed) waived its rights to have election set due to ULP's which were part or could have been part of settle agreement it entered into with U, thereby enabling election to take before end of posting period, effectively waived its right to protest ULP's committed prior to execution of agreement)

8775 CONTRACT WAIVER OF RIGHTS TO BARGAIN CONCERNING MATTERS NOT COVERED

National Car Rental System, Inc. **252 NLRB No**

8775—Cont.

(contract's *zipper clause* waiving parties' bargaining rights over subject matter not included, or referred to, in contract or w/i contemplation or knowledge of parties when they negotiated agreement held not waiver of effects of E decision to sell and relocate operations, since general *zipper clause* did not amount to *clear specific and unmistakable waiver* by U of right to be consulted regarding effects of elimination of all unit positions)

Henry Vogt Machine Company **251 NLRB No. 040**
(Bd found U's failure to bring up issue of cafeteria privilege for laboratory Ees during bargaining not tantamount to a waiver where there was no *clear and unequivocal* evidence of U's *conscious relinquishment* of right to bargain and no clear and unequivocal notice by E that privileges would be withdrawn)

American Telephone and Telegraph Company—
Long Lines Department **250 NLRB No. 008**
(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment*, requires *conscious relinquishment* by U)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

8787 RIGHT TO ASSISTANCE OF UNION REPRESENTATIVE AT INVESTIGATORY INTERVIEW

General Motors Corporation **251 NLRB No. 121**
(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Prudential Insurance Company of America **251 NLRB No. 213**
(where contract provision which waived unit Ees right to *Weingarten* representation had been in contract since 19 years prior to that decision and U has consistently taken position that it was not waiving its rights, provision is not waiver of those rights)

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**
(*Weingarten* rights not waived where U agreed that probationary Ee could be discharged at sole discretion of E since probationary Ees have all rights of Ees under Act)

Super Valu Xenia, a Division of Super Valu Stores,
Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**
(ct held contrary to Bd that Ee during disciplinary interview waived any right to U representation when Ee decided to proceed with meeting w/o U stewards present)

8799 CONTRACTUAL BENEFITS

Pacemaker Yacht Co., A Division of Mission
Marine, Inc. **253 NLRB No. 095**
(waiver over particular subject matter must be shown to be clear and unmistakable; in absence of explicit waiver language in contract, Bd requires probative extrinsic evidence that parties intended waiver)

Pacemaker Yacht Co., A Division of Mission
Marine, Inc. **253 NLRB No. 095**
(U cannot waive Ees' right to strike over issue of medical payments from U fund to insurance carrier by *ad hoc* statements of purported intent of collective bargaining agreement in view of essentially conflicting interests of U and Ees regarding Fund)

Exxon Company, U.S.A. **253 NLRB No. 027**
(failure of E to demand bargaining over U's unilateral change by requiring nonU Ees to pay service fee for U's administration of health insurance plan held not waiver, where U gave no notice of change and where both E and U considered that service fee was intra-U dispute)

Exxon Company, U.S.A. **253 NLRB No. 027**
(U did not waive right to bargain over E's unilateral charge by allowing nonU Ees to participate in medical insurance plan formerly available to nonunit Ees, notwithstanding E's action was in response to Ee protest over U's unilateral action in charging service fee to nonU Ees for participating in contractually agreed-upon U medical plan)

787 ESTOPPEL

2000 ELEMENTS OF ESTOPPEL

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

2033 INTENTIONALLY CAUSING PARTY TO BELIEVE FACTS TO BE OTHER THAN WHAT THEY REALLY ARE

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where U did not lack information or means of obtaining information as to status of E's membership in multi-E association but took no action to clarify ambiguity as to such status)

2067 KNOWING OF SUCH BELIEF AND OF POSSIBLE CHANGE IN POSITION IN RELIANCE THEREON, REASONABLE STEPS TO NOTIFY PARTY OF TRUE STATE OF FACTS WERE NOT TAKEN

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where no detrimental reliance by U on E's conduct suggesting membership in multi-E association)

4000 TYPES OF ESTOPPEL

4025 ESTOPPEL BY SILENCE

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(respondent held estopped, on remand from court to determine purpose and effect of specific U conduct, to assert that local U had no authority to act for certified representative at such late date in proceedings)

4037 EQUITABLE ESTOPPEL

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where U did not lack information or means to obtain information as to E's membership status in multi-E association, and there was detrimental reliance by U on E conduct suggesting membership)

6000 ESTOPPEL OF BOARD

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that estoppel exists as result of actions by Bd, GC, and U whereby E was deprived of right to hearing on U's objections to election, and hearing on complaint issued against U and, consequently, GC and U do not seek bargaining order with *clean hands,* rejected, where there was no impropriety on U's part or any irregularity in actions of Bd or GC, E did not show it had any *right* to hearing on objections or to require that GC not settle complaint against U, and this is not proper forum for assessing remedy against U)

6001 GENERALLY

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(while agency is free to change its policies as it determines are in public interest, it must supply reasoned analysis indicating why its departure from precedent)

6012 GENERAL COUNSEL'S RULINGS OR OTHER ACTIONS

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **252 NLRB No. 156**
(U not permitted to present evidence in proceeding alleging violation of Section 8(b)(7)(c) regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which E had longstanding relationship, thus rendering picketing for continued rather than for initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case; final statutory authority to decide whether U should obtain hearing on its charges rests with GC; *Bd will not act as forum that GC, for reasons satisfactory to himself has thought it proper to dismiss*)

8000 ESTOPPEL OF PARTIES

Bay Medical Center, Inc. **252 NLRB No. 159**
(where E had consistently refused to bargain with charging party on basis that unit was inappropriate rather than on basis charging party lacked authority to demand bargaining and had admitted identity of bargaining agent in answer, E is estopped to assert in exceptions to ALJ's decision that charging party lacked authority to demand bargaining)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 21**
(E's contention that estoppel exists as result of actions by Bd, GC, and whereby E was deprived of right to hearing on U's objections to electio and hearing on complaint issued against U and, consequently, GC and U d not seek bargaining order with *clean hands,* rejected, where there was n impropriety on U's part or any irregularity in actions of Bd or GC, E di not show it had any *right* to hearing on objections or to require that GC n settle complaint against U, and this is not proper forum for assessing reme against U)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 198**
(estoppel against E's repudiating new multi-E bargaining agreement, create where E did not notify U of intent not to renew bargaining obligation und expired contract but rather, for 15 months after effective date of n agreement, availed itself of benefits of U hiring hall for referral of Ees, a implemented terms of the new contract, including paying contract wa scale, making deductions, and remitting payments, to various trust fun

800 COURT PROCEEDINGS

817 PROCEEDINGS FOR ENFORCEMENT OR REVIEW OF BOARD DECISIONS AND ORDERS

0100 GENERALLY

0500 JURISDICTION

0501 GENERALLY

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD **632 F.2d 30 (C.A. 7, 1980)**
(contrary to E's contention that appeal herein may be treated as ptn for review of final Bd order, ct held jurisdiction under 10(b) may not be obtained on appeal from district ct holding that it had no jurisdiction to review Bd decision denying certification to expedited election conducted pursuant to 8(b)(7)(C) during period in which challenges to validity of election were being resolved)

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**
(district ct w/o jurisdiction to hear E's due process claims against Bd discovery rules; proper forum for review is ct of appeals)

0550 ORDER REVIEWED MUST BE 'FINAL ORDER' UNDER SECTION 10(c)

0550-3300 Not final orders

Linda Willenbrink, et al. v. N.L.R.B. **612 F.2d 1088 (C.A. 8)**
(Bd determinations under sec. 9 in certification proceeding are not directly reviewable under sec. 10(f) as final orders of Bd and orders concerning representation matters are only reviewable when representation proceedings are drawn into question by ptn for enforcement or review of Bd order made under sec. 10(c) to restrain ULP)

0550-3325 Dismissal of representation case

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(decisions of RD, if not set aside by Bd.are entitled to same weight as determinations by Bd; RD's opinion *final* determination binding parties where party with prerogative to appeal to Bd did not do so)

0575 STANDING AS 'PERSON AGGRIEVED' UNDER SECTION 10(f)

0575-0100 Generally

Linda Willenbrink, et al. v. N.L.R.B. **612 F.2d 1088 (C.A. 8)**
(Bd determinations under sec. 9 in certification proceeding are not directly reviewable under sec. 10(f) as final orders of Bd and orders concerning representation matters are only reviewable when representation proceedings are drawn into question by ptn for enforcement or review of Bd order made under sec. 10(c) to restrain ULP)

Linda Willenbrink, et al. v. N.L.R.B. **612 F.2d 1088 (C.A. 8)**
(ptn for review dismissed since ct lacked jurisdiction to review matter where ct had remanded case to Bd and cannot regain it until proper appeal is perfected by person with standing under Sec. 10(f) of Act; petitioners herein have no such standing since harm they urge relates to Bd's reinstatement of strikers allegedly to block decertification proceeding and therefore such charge goes to Bd certification action not related to any pending ULP charge over which ct has jurisdiction so as to be reviewable under 10(f))

0900 VENUE

0925 APPROPRIATE CIRCUIT OR DISTRICT

0925-5000 Where 'person' resides

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**

0925-5050 Having greatest aggrievement

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(venue would most probably lie in circuit where most parties reside and/or where party suffering greatest aggrievement resides)

1400 STAY OF BOARD ORDER

2300 PARTIES

2700 INTERVENTION

3200 PLEADINGS

3600 CONSOLIDATION OF PROCEEDINGS

4100 RECORD

4125 CASE MUST BE HEARD ON RECORD CERTIFIED BY BOARD

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**
(notwithstanding valid objection to election, because of delinquency on part of E to raise objection Bd did not abuse its discretion in refusing to reopen record)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**

4175 CONTENTS OF RECORD

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(no special significance attaches to ALJ's findings where ALJ and Bd reach different legal conclusions based on same facts; while ct reviews Bd's decision, ALJ's decision is part of record)

4500 BRIEFS AND ORAL ARGUMENT

5000 DEFAULT JUDGMENT

5400 SUMMARY ENFORCEMENT

5401 GENERALLY

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(Ct of Appeals clearly has power to order entry of summary judgment to non-movant, given appropriate circumstances)

5467 'EXTRAORDINARY CIRCUMSTANCES' EXCEPTION OF 10(e) APPLICABLE

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(E's failure to raise issue before Bd and ct of appeals as to whether information requested by U regarding E's aptitude testing program would be of any actual or potential relevance to performance of U's statutory duties held foreclosed from consideration herein by Sec. 10(e); E's contention that it had *no practical reason* to object was not an *extraordinary circumstance* excusing E's neglect to press an exception before Bd)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(E failed to comply with Sec. 10(e) and waived his right to raise issue before ct regarding contradictory evidence that Bd allegedly erroneously refused to consider, where E's statement of position on remand was ambiguous and caused Bd to interpret it as requesting resolution of charge w/o resolution of contradictory evidence, and E's counsel stated to ct that extraordinary circumstances did not exist)

5900 SCOPE OF JUDICIAL REVIEW

5901 GENERALLY

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**
(reviewing ct may not displace Bd's choice between two fairly conflicting views, even though ct would justifiably have made a different choice had the matter been before it de novo, and such standard is not modified when Bd and its ALJ disagree)

N.L.R.B. v. A. G. Parrott Company **630 F.2d 212 (C.A. 4, 1980)**
(while reviewing cts should be slow to overturn an administrative decision, cts are not left to sheer acceptance of Bd's conclusions and they are not obliged to rubber-stamp affirmance of decisions that they deem inconsistent with a statutory mandate or that frustrate congressional policy)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd has broad latitude in ascertaining appropriate remedial measures, and its decision must be given *special respect*; ct will not disturb Bd's order unless it is patent attempt to achieve ends other than those which effectuate policies of Act)

Midwest Stock Exchange, Inc.; et al. v. N.L.R.B. **620 F.2d 629 (C.A. 7, 1980)**

5901—Cont.

(cts of appeals bear responsibility of reviewing Bd's specific application of its rules initially promulgated under its *wide discretion,* establishing procedures and safeguards for conducting R elections; where Bd has promulgated standards governing conduct of election, those standards are controlling until Bd announces a change and its reason for it, and Bd's application of its standards must be reasonably consistent with its previous decision)

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**
(ct has responsibility to carefully examine Bd's findings and reasonings to assure that Bd has considered factors relevant to its choice of remedy, that remedy is remedial not punative, and effectuates purposes of Act)

5901-6700 Enforcement mandatory where Board has acted properly

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(reviewing ct must not substitute its judgment for that of agency but must decide only whether agency made reasonable finding, not whether it made correct finding; difference between two depends on how strongly reviewing ct disagrees with finding)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

K Mart Corporation v. N.L.R.B. **626 F.2d 704 (C.A. 9, 1980)**
(ct will accept inferences drawn by Bd from external conduct even if another inference seems more plausable so long as supported by substantial evidence)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(enforcement denied where ct felt that Bd majority findings on ultimate factual question were not supported by substantial evidence on record considered a whole; 8(a)(4) charge in issue)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(Bd's finding that land title companies were neutrals with respect to U's dispute with title insurance company, whose policies of title insurance they sold, and accounted for 95% of revenues of land title companies, affirmed where findings of neutrality were based on substantial evidence)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(enforcement denied since ct was able to determine that lessees in instant case were independent contractors; nor would enforcement have been granted w/o first having received from Bd intelligible rationale for distinctions it drew between Ees and independent contractors)

5907 FINDINGS OF FACT

5907-2000 REVIEWABLE AS TO WHETHER SUPPORTED BY 'SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE'

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**
(Bd's opn failed to refute ALJ's factual findings on remand and is thus not supported by substantial evidence; its efforts to undercut these findings in its brief to ct do not meet its official obligation)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(drawing line between prediction and implied threat is often one of great difficulty, and possibility that statement contains implied threat must be viewed from Ees' point of view; for that reason Bd expertise is particularly relevant to determination of whether latent threat lies hidden in E's words, while ct's scope of review is limited to inquiry whether Bd's determination is reasonable and supported by substantial evidence)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980**
(in assessing E's activity alleged to constitute unlawful restraint or coercion relevant inquiry is not limited to examining ostensible meaning or likely impact on Ees of E's statement; scope of inquiry must encompass entire pattern of E conduct)

N.L.R.B. v. Sevakis Industries, Inc. **633 F.2d 217(T) (C.A. 6 1980**
(although ct might have viewed various aspects of the 8(a)(1), (3), and (5 charges differently if it were fact-finders herein and if charges were isolate from each other, cumulative effect of evidence convinced ct that it coul not appropriately hold ALJ's findings of fact and conclusions of law adopt ed by Bd as not supported by substantial evidence)

Machine Tool and Gear, Inc. v. N.L.R.B. **633 F.2d 216(T) (C.A. 198**
(determination of whether Ee is supervisor or not is question of fact, an Bd's finding here that Ee was not supervisor is conclusive since it is suppor ed by substantial evidence)

N.L.R.B. v. Franklin Property Company, Inc., d/b/ a The Hilton Inn **617 F.2d 447 (C.A. 6, 198**
(ct enforced Bd order where there was substantial evidence to suppo findings that E coercively interrogated and threatened Ees)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 198**
(economic striker whose job has not been permanently promised to replac ment at time striking Ee is discharged is entitled to reinstatement; determin tion of whether job has been permanently promised is question of fact for review to see if it is supported by substantial evidence)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 198**
(standard applies even where Bd has reversed ALJ, especially where Bd h adopted ALJ's credibility determinations and findings of fact but draw different conclusions of law)

Congress of Independent Unions and Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 172 (C.A. 8, 19**
(ct's obligation was to review record in entirety, for substantiality of e dence must take into account whatever in record fairly detracts from weight; thus, history of dispute and language of picket signs and letters s by respondent U to picketed E must be considered together in order determine whether U's picketing exhibited recognitional objective)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 19**
(on reviewing entire record, ct concluded that there was substantial dence in record to support Bd's finding that each Ee resigned from U bef crossing picket line in violation of U constitution and thus, no longer bo by U conditions)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 19**
(whether E has permanently replaced economic striker is factual ques and Bd's finding reviewable under *substantial evidence* standard of Sec 10(e))

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1**
(evidence may properly be considered less substantial when ALJ *who observed witnesses and lived with case* has drawn conclusions different f those reached by Bd especially where credibility issues are important)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1**
(in determining whether substantial evidence on the record as a w supports conclusion that legitimate business reason was motivating fa i.e., the *but-for* cause of discharge, ct must not limit its consideratio supporting evidence while excluding contradictory evidence)

5907-2001 Generally

Tri-State Truck Service, Inc. v. N.L.R.B. **615 F.2d 65 (C.A. 3,**
(Bd's finding that two Ees were unlawfully discharged for engagin protected concerted activity reversed in absence of substantial evidenc record as whole that E knew of such concerted activity from telep conversation with individual Ee who only asked about time and one-ha working on Saturday with no indication that subsequent decision of ref to work was made on other than an individual basis; furthermore knowledge that two discharged Ees lived together does not infer know of concerted activity)

Hutzler Brothers Company v. N.L.R.B. **630 F.2d 1012 (C.A. 4,**
(ct reversed Bd finding that E unlawfully denied U organizers acc store Ees since GC had not sustained his burden of proving that U h other reasonable means of communicating with Ees; absent effort by communicate by other possibly available means, Bd could only infer equate access from physical evidence of structure and location of working habits of Ees, and conduct of E)

United States Postal Service v. N.L.R.B. **614 F.2d 384 (C.A. 4)**
(where factual and legal theory of pretext discharge relied upon by B to support finding of violation was completely different from factu

5907-2001—Cont.

legal theory of ***Weingarten*** violation upon which evidentiary hearing was conducted before ALJ and case decided by Bd, ct held substantial evidence test was not met)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(in reviewing reasonableness of Bd's findings under substantial evidence test, ct must review reasonableness of conclusion Bd drew from record and must determine how reasonable person might view record)

Western Clinical Laboratory, Inc. v. N.L.R.B. **633 F.2d 225(T) (C.A. 9, 1980)**
(ct cannot reject Bd's choice between two fairly conflicting views even if it would have decided matter differently had it been before ct originally)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Es' contention that Bd demanded more evidence than required to rebut presumption of U's majority support rejected; substantial evidence on record supported Bd's decision and policies and goals of Act are best served by enforcement of Bd's orders on Es' refusal to bargain)

N.L.R.B. v. Best Products Company, Inc. **618 F.2d 70 (C.A. 9, 1980)**
(notwithstanding Bd's finding that Ee's suspension was unlawfully motivated by Ee's U activity and not her excessive absenteeism, ct denied enforcement where Bd's finding was supported not by substantial evidence but circumstantial inferences of pretextual motivation and U animus)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(enforcement denied where ct felt that Bd majority findings on ultimate factual question were not supported by substantial evidence on record considered a whole; 8(a)(4) charge in issue)

5907-2033 Erroneous findings immaterial where other evidence sustains conclusions

N.L.R.B. v. Local 19, Hotel, Motel, Restaurant Employees and Bartenders Union, AFL-CIO **628 F.2d 1357(T) (C.A. 9, 1980)**
(where ALJ's decision to reject E's business justification reason for E's layoff not supported by substantial evidence and record contains no direct evidence of anti-U animous layoff's not violative)

5907-4000 Court determines sufficiency of evidence supporting admitted or uncontested findings

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1980)**

Aeroglastics, Inc. v. N.L.R.B. **610 F.2d 455 (C.A. 6, 1979)**

5907-8000 Court may not encroach upon fact-finding prerogatives of Board

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(ct's scope of review as to factual findings is narrow and it may only reverse if Bd's finding is not supported by substantial evidence; it is for Bd to draw inferences and assess credibility, and ct may not substitute its assessment of evidence for Bd's if there are conflicting versions in record)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. **599 F.2d 1057 (C.A. 9, 1979)**
(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

5907-8500 Weight given ALJ findings

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**
(disagreement between ALJ and Bd as to whether economic strikers were permanently replaced was not difference of opinion as to credibility of witnesses or E's motivation, but drawing of different conclusions from same facts, ALJs determinations as to facts remain intact)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ALJ's decision given special weight when contrary to Bd's especially when credibility involved)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(Bd's finding that discharge of Ee violative not supported by substantial evidence where his driving record resulted in problem in insuring him; further, ALJ's finding that there was insufficient evidence of discriminatory motive entitled to weight)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

5911 CREDIBILITY RESOLUTIONS

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(credibility resolutions preculiarly province of Bd)

Western Clinical Laboratory, Inc. v. N.L.R.B. **633 F.2d 225(T) (C.A. 9, 1980)**
(of Bd will not be overturned by ct absent *exceptional circumstances*)

N.L.R.B. v. Columbia Building Materials, Inc. **624 F.2d 193(T) (C.A. 9, 1980)**
(ct upheld Bd's finding based primarily on credibility determination that E's hiring Ees at *trainee* rate which was below contract rate was unlawful since testimony on which Bd relied not inherently incredible)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ALJ's decision given special weight when contrary to Bd's especially when credibility involved)

5914 CONCLUSIONS OF LAW

5914-0100 Generally

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(decisions of U.S. Ct of Appeals is law which Bd must follow in cases arising in particular judicial circuit)

5914-2500 Weight given ALJ conclusions

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

5914-5000 Experienced judgment of Board entitled to great weight

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(Bd decision that impasse alone does not justify E's unilateral withdrawal from multi-E bargaining association subject to only limited review where Congress intended to leave to Bd's *specialized judgment... questions concerning multi-E bargaining* and here Bd has struck reasonable balance)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(while deference is to be given to agency's intepretation of statute it administers, it is cts that have final responsibility under constitution on matters of statutory interpretation)

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(agency's conclusions based upon inferences it draws not to be set aside by reviewing ct unless they transgress bounds of reason)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(Bd has special expertise in classifying *mandatory* and *non-mandatory* subjects of bargaining; Congress delegated primary responsibility of defining scope of duty to bargain to Bd)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(cts should defer to Bd expertise, particularly where Ees may be especially sensitive to implied threats)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(ct recognizes that Bd can order E to cease ULPs at its other plants on proof of violation at one location when company-wide policy is involved)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(ct accords special deference to Bd's expertise in determining supervisory status under substantial evidence test because gradations of authority w/i organization can be so subtle)

5914-5000—Cont.

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

C & D Foods, Inc. v. N.L.R.B. **626 F.2d 578 (C.A. 7, 1980)**
(Bd's bargaining order enforced since E's objections concerning certification of inappropriate unit were properly overruled by Bd as being w/i its expertise and discretion to exclude Ees of five grow-out farms as being agricultural Ees and to exlcude Ees of sixth grow-out operation as lacking a community of interest with Ees of properly certified unit)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(Bd decision based on dissent in prior Bd case does not merit deference where there has been no significant change in decisional law)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(it is for Bd, and *not the cts*, to make determination based on its expert estimate as to effects on election process of ULPs of varying intensity)

K Mart Corporation v. N.L.R.B. **626 F.2d 704 (C.A. 9, 1980)**
(ct will accept inferences drawn by Bd from external conduct even if another inference seems more plausable so long as supported by substantial evidence)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(issue of whether current three year contract was bar to election ptn remanded to Bd to explain, why *membership* as used in contract should be interpreted differently depending on whether word appeared in U security clause or health benefit clause, and whether petitioner, to its detriment, reasonably relied on contract's cover dates in determining when to file election ptn; Bd must follow its own precedent by excluding extrinsic evidence from its consideration or explain why its rules should be disregarded; ct not allowed to substitute different rationale for that provided by Bd)

N.L.R.B. v. Chet Monez Ford **624 F.2d 193(T) (C.A. 9, 1980)**
(ct will defer to Bd's expertise in assessing impact of ULP's with regard to U's subsequent loss of majority support notwithstanding record is silent as to actual impact)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(in Bd's interpretation of mandatory bargaining provisions)

N.L.R.B. v. Richard Tischler, Martin Rader and Donald Connelly, Sr., a limited partnership, d/b/a Devon Gables Nursing Home, et al. **615 F.2d 509 (C.A. 9) (1980)**
(deference accorded to Bd's conclusions rather than to ALJ's where Bd did not disagree with ALJ's assessment of credibility of witnesses, but rather drew different inferences from statements made by witnesses upon whom ALJ relied)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

5914-7500 Consideration may be given to fact Board and ALJ reached different results

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(no special significance attaches to ALJ's findings where ALJ and Bd reach different legal conclusions based on same facts; while ct reviews Bd's decision, ALJ's decision is part of record)

N.L.R.B. v. Ridgeway Trucking Company **625 F.2d 122 (C.A. 5, 1980)**
(Bd's decision cannot be reversed where it merely draws different inference than ALJ from established facts, provided there is substantial evidence; here, ALJ refused to credit testimony of two Ees who accused E of specifically firing them and Bd did not refute finding and did not accept those witness' credibility either but reached its conclusion from remainder of record, relying on facts accepted as credible by ALJ)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(judicial deference to Bd's legal conclusion as to relevance of information sought was not lessened as result of contrary legal inference drawn by ALJ)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(ct attached no significance to Bd's acceptance of ALJ's findings of fact but rejection of his conclusions of law)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**
(disagreement between ALJ and Bd as to whether economic strikers were permanently replaced was not difference of opinion as to credibility of witnesses or E's motivation, but drawing of different conclusions from sam
facts, ALJs determinations as to facts remain intact)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9**
(ALJ's decision given special weight when contrary to Bd's especially whe
credibility involved)

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980**
(evidence may properly be considered less substantial when ALJ *who ha*
observed witnesses and lived with case has drawn conclusions different fro
those reached by Bd especially where credibility issues are important)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C**
(Bd has broad discretion to fashion remedies to effectuate policies of A
because relation of remedy to policy is singularly connected to Bd's comp
tenceand knowledge gained from experience; therefore, since Bd, notAL
was given such discretion, Bd's rejection of ALJ's recommended remedy
of no consequence)

5928 DISCRETION IN EXERCISE OF JURISDICTION

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 198**
(enforcement denied where Bd committed error in declining to defer
arbitration award as clearly repugnant to Act where arbitrator had dete
mined that E had discharged Ee for just cause; Ee's conduct arguab
unprotected and where arbitration award arguably characterizable as n
inconsistent with Bd policy, Bd must defer to arbitrator's decision)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 198**
(in reviewing Bd's refusal to defer to arbitration award as clearly repugna
to Act, ct applied abuse of discretion standard based on substantial eviden
of record to support reasonableness of Bd's actions, as opposed to reviewi
Bd's decision under an error of law standard)

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 19**
(Bd and its regional offices may not render jurisdictional decisions, and th
overrule them *retroactively* and thereby transform E's interim behavior, le
when pursued, into illegal ULPs; E's conduct after formal declaration by
that he is not covered by Act and before re-examination of that issue, can
subsequently be branded ULP subjecting E to liability for back-pay)

N.L.R.B. v. Safeway Stores, Inc. **622F.2d 425 (C.A. 9, 19**
(Bd not required to defer to arbitrator's decision on grievability of E
transfers where sole issue presented to Bd was whether E had commit
ULP by refusing to produce requested documents to defend its decision
transfer Ees)

5932 PROTECTED NATURE OF ACTIVITY

St. Regis Paper Company v. N.L.R.B. **623 F.2d 487 (C.A. 6, 19**
(discharge and failure to reinstate Ees who struck E during critical perio
gain recognition for U, rival of petitioner, not unlawful, since if E, du
pendency of election proceedings, had recognized rival U as bargai
agent, it would have been guilty of interference with Bd's election pr
dures as well as ULP in violation of Section 8(a)(1) of Act)

5935 UNIT DETERMINATIONS

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1**
(remanded for reconsideration of question of whether Ees known as *Op*
tor/Runners were guards w/i meaning of Sec. 9(b)(3) where Bd had de
mined Ees were not guards on basis of R hearing only, did not cons
relevant information introduced at ULP hearing on related charge
avoided addressing inconsistency between classification of Ees in pre
case and Ees with same title in three Bd decisions involving same
notwithstanding Bd's argument that R/R Sec. 102.67(f) required part
produce all available evidence at R hearing rather than attempt to reliti
unit issue at ULP hearing)

N.L.R.B. v. Continental Corporation of Michigan, Inc. d/b/a Holiday Inn West **612 F.2d 257 (C.**
(Bd has very broad discretion in determining bargaining units; See *Pac*
Motor Car Co. v. N.L.R.B., 330 U.S. 485 (1947))

Mary Thompson Hospital, Inc. **621 F.2d 858 (C.A. 7,**
(Ct refused to enforce Bd's order that E bargain with separate un
licensed sanitary engineers apart from other engineering and mainten
department Ees at hospital since in finding unit appropriate Bd failed to
congressional admonition to avoid fragmentation of units at health
facilities but rather applied traditional community of interests standard)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.**

(Bd's unit determinations will not be overturned by ct unless the
arbitrary and unreasonable, and ct may not substitute its own judgme
rationally supported position adopted by Bd which has discretion to c
an appropriate unit and select among several appropriate ones)

5935-0100 Generally

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8,**
(Bd may give same effect to stipulation in R case that Es were joint E
gives to litigated determination)

5935-5000 Supervisory status of employee

Maine Yankee Atomic Power Company v. N.L.R.B. **624 F.2d 347 (C.A. 1, 1980)**

(shift operating supervisors (SOS) at nuclear power plant found statutory supervisors where they: are in charge of control room, required to be there at all times, give responsible directions requiring use of independent judgment to two lower level classes, salaries 17 percent higher than lower level Ees, attend management meetings; responsibility level high due to complex, criterial character of job requirements; fact that SOS must inform his supervisor if emergency occurs does not strip him of authority to act)

Maine Yankee Atomic Power Company v. N.L.R.B. **624 F.2d 347 (C.A. 1, 1980)**

(Bd must not ignore E job description which gave Ee-supervisory status where record contained real evidence as to Ee's supervisory duties)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

5935-7500 Independent contractor status

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

5942 CONDUCT OF ELECTIONS AND CERTIFICATION OF UNIONS

5942-0100 Generally

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**

(election will be invalidated only if material fact has been misrepresented, opponent has no opportunity to reply and election process is impaired)

5942-6000 Rulings on challenges

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**

(where 2 supervisors signed U authorization cards and voted, subject to challenge, in election, this is not sufficient misconduct to warrant setting aside election; their activity was minor and they did not threaten or coerce other Ees to vote for U)

5942-8000 Rulings on objections

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**

(ct will reverse Bd's decision in regard to alleged interference with election only where Bd has abused discretion)

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**

(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with no quasi about it, concerning which cts should not interfere save for the most glaring discrimination or abuse* however, if party demonstrates by prima facie evidence existence of *substantial and material factual issues which if resolved in its favor, would require setting aside election* hearing is required)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**

(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

N.L.R.B. v. Ohio Masonic Home **620 F.2d 138 (C.A. 6, 1980)**

order enforced and election upheld where E did not sustain burden of establishing that Bd acted arbitrarily, capriciously, and abused its discretion in overruling objections and ordering certification)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**

(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**

(party challenging election has heavy burden to show coercion took place and is not entitled to evidentiary hearing unless it supplies prima facie evidence presenting substantial and material factual issues which would warrant setting aside election)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**

(contention by E, in objecting to election, that U had created racially inflamatory atmosphere precluding fair election, rejected, where E failed to *supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election*)

5944 DETERMINATIONS AS TO EFFECTS OF ULPS ON REPRESENTATION ELECTIONS

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**

(bargaining order appropirate where E has engaged in ULPs and at one point U had support of majority of Ees)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**

(Bd not required to give elaborate explanation of factors warranting bargaining order but to estimate impact of ULPs on liklihood of fair rerun-election)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**

(enforcement denied where Bd improperly granted summary judgment in ULP case despite E's showings of atmosphere of fear and coercion that would tend to interfere with election and possible *Savair* violations; hearing was required on E's objections)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**

(although it would be difficult to make sufficient showing to have election set aside where U won election by wide margin, ct must consider possibility that objectionable conduct itself contributed to margin of victory)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**

(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**

(it is for Bd, and *not the cts*, to make determination based on its expert estimate as to effects on election process of ULPs of varying intensity)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**

(bargaining orders not limited to *exceptional* cases marked by *outrageous* and *pervasive* ULPs ... SCt approved *Bd's use of bargaining orders in less extraordinary cases marked by less pervasive practices which nonetheless still have tendency to undermine majority strength and impede election processes*)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**

(determination of whether bargaining order warranted is task, not for reviewing cts, but for Bd based on its expert estimate as to effects on election of the ULPs)

5949 JURISDICTIONAL DISPUTE DETERMINATIONS

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**

(Bd's finding that land title companies were neutrals with respect to U's dispute with title insurance company, whose policies of title insurance they sold, and accounted for 95% of revenues of land title companies, affirmed where findings of neutrality were based on substantial evidence)

5953 SECONDARY BOYCOTT DETERMINATIONS

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

5953—Cont.

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(ct's understanding of legality of work preservation agreements controlled by *National Woodwork Manufacturers Association v. NLRB*, 386 U.S. 612 (1967) and *NLRB v. Enterprise Association of Steam, etc. Pipefitters, 429 U.S. 507 (1977)*)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd erred as matter of law by ignoring traditional work patterns when defining work in contraversy; being work of loading and unloading ocean-borne cargo)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

5956 REMEDIAL ORDER PROVISIONS

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**

(although Bd has broad discretion in devising remedial orders, and relationship of remedy to policy is peculiarly a matter for administrative competence, Bd's choice of remedy does not constitute a blank check for arbitrary action; ct's role in reviewing ptns for enforcement under 10(e) is not that of a passive conduit)

N.L.R.B. v. Jamaica Towing, Inc. **632 F.2d 208 (C.A. 2, 1980)**

(bargaining order not warranted where E's ULPs consisted of interrogations, expression of opposition to U, threats of less overtime, stricter enforcement of workrules and implied promises that some of Ees' demands would be met as none of E's statements were ever put into effect and 38 percent of workforce left unit for reasons unrelated to E's ULPs; moreover, Bd, on remand, failed to elicit evidence regarding changed composition of workforce and whether Bd order might impair Ee rights, doing more harm than good)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**

(although granting enforcement of order to c/d underlying violations, ct denied enforcement of bargaining order where record revealed neither lingering inhibitory effect nor likelihood of recurrence, and as such, did not warrant extraordinary remedy of bargaining order)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**

(in absence of Bd orders for reinstatement and backpay, sole effect of finding of ULP is issuance of c/d order which prevents similar (violative) activity in future; no hardship to E where Bd retroactively changed its position regarding presence or absence of stenographers at negotiating sessions, now found to constitute *non-mandatory* subject of bargaining)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**

(where strike not ULP strike, ct will not enforce Bd's order of reinstatement and backpay; record was devoid of evidence that impasse over nonmandatory subject (presence of stenographers at negotiating sessions) contributed to U's decision to strike)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**

(purpose of backpay orders is to make Ee whole for discrimination against him and to deter E from further unlawful activity)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(Bd's choice of remedy in matter w/i its own discretion, open only to limited review; Bd's choice of remedy should stand *unless it can be shown that order (to pay U's reasonable negotiating expenses and Bd's and U's reasonable litigation costs) is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of the Act*)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(ct recognizes that Bd can order E to cease ULPs at its other plants on proof of violation at one location when company-wide policy is involved)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(Bd's remedial order concerning *company-wide dissemination of notice and access to company plants*, not punitive since notice and access order was designed to counteract use E made at other plants of its ULPs in bargaining at instant plant)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(ct found no abuse of discretion in Bd's refusal to extend certification for two years; if E complied with bargaining order, one more year of bargaining should suffice; if not, it will again be charged and *year will not have begun to run*)

J. P. Stevens & Co., Inc. v. N.L.R.B. **612 F.2d 881 (C.A. 4**

(where Bd granted extraordinary relief, applying corporate-wide relief for acts committed at single plant, ct upheld decision as Bd acted w/i its discretion to remedy ULPs)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980**

(Bd's remedies of ordering E and multi-E association to cease and desist to recognize or deal with supervisor as U official and ordering E not to permit supervisor to serve as U official held proper)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980**

(Bd's actions to remedy U's failure to represent Ee enforced; Bd set aside collective bargaining agreement, decertified U, and ordered U to make E whole for differential between journeyman's scale and his actual wages fo entire time of his employment with E)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 198**

(Bd ordered proper remedy in revoking U certification where U did n fairly represent all those in bargaining unit)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A.**

(ct has held that because of unusual nature of *Gissel* bargaining order B should look to events subsequent to ULP in order to determine appropriat ness of (bargaining) order)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A.**

(bargaining orders are always remedial and are designed to set matters they would have been in absence of E's misconduct)

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 19**

(where U agreed in advance to accept whatever proposals E submitt covering certain mandatory subjects of bargaining that remained unresolv R/O requiring E to propose contract terms covering these unresolved iss and to execute contract if U agreed to proposals, denied enforcement, si it is doubtful U representative has legal authority to make any such comm ment or that Bd or ct has authority to enforce such contract, furthermo since U free to reject contract there was no contract agreed to by b parties)

N.L.R.B. v. Mutual Maintenance Service Co., Inc. **632 F.2d 33 (C.A. 7, 19**

(although ct affirmed Bd's finding that U adherent was discharged beca of his U activities, ct denied portion of Bd order concerning reinstatemen Ee where Ee defrauded federal government and former E of unemploym compensation benefits, notwithstanding that current E was aware and e encouraged this Ee to work for E under alias while collecting unempl ment compensation)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1**

(bargaining orders not limited to *exceptional* cases marked by *outrageou pervasive* ULPs ... SCt approved *Bd's use of bargaining orders in less extra nary cases marked by less pervasive practices which nonetheless still have ency to undermine majority strength and impede election processes*)

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1**

(bargaining order not justified where Bd did not balance E's, U's and rights in determining necessity of order, Bd failed to consider whether wanted U representation and here an election was held 2 years aft committed ULP and U was defeated)

5963 BACKPAY DETERMINATIONS

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7,**

(ct cutoff backpay liability of E to economic striker who was unlaw discharged from time E resigned but allowed backpay from time o charge until date of resignation as Bd exceeded its authority to re violations)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7,**

(ct held proper Bd order of reinstatement and back pay from da unlawful discharge for Ee until offered reinstatement by E as consisten remedial policies of Act)

N.L.R.B. v. Columbia Building Materials, Inc. **624 F.2d 193(T) (**

(*when backpay order is entered it should stand unless order is patent att achieve ends other than those which can fairly be said to effectuate pol Act; backpay order involved here, which does no more than return affec to economic state which they would have enjoyed absent unilateral wage cation, cannot be said to achieve ends other than those which would e Act*)

5970 INTERPRETATION OF STATUTES

Mary Thompson Hospital, Inc. **621 F.2d 858 (C.A. 7, 1980)**
(Bd should heed congressional admonition to avoid fragmentation of units in health care facilities rather than applying traditional community of interest standards)

5970-5000 NLRA

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**
(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(while deference is to be given to agency's intepretation of statute it administers, it is cts that have final responsibility under constitution on matters of statutory interpretation)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(Bd's failure to conduct hearing was arbitrary, capricious and unlawful where its order denying E review, of issue of whether full-time faculty members of college were managerial or supervisory Ees, was based on its statutory interpretation which had been rejected by Ct of Appeals and Supreme Court)

5977 INTERPRETATION OF ADMINISTRATIVE REGULATIONS

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. **622 F.2d 1195 (C.A. 4, 1980)**
(where RD determines that objections to election do not require hearing, RD, and not objecting party, is responsible for transmitting *whole* record (all evidence considered in reaching decision) to Bd for its review on appeal, notwithstanding R/R 102.69(g) places responsibility for submission of documents on objecting party)

5984 DISCRETIONARY ADMINISTRATIVE POLICIES

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(Bd's failure to conduct hearing was arbitrary, capricious and unlawful where its order denying E review, of issue of whether full-time faculty members of college were managerial or supervisory Ees, was based on its statutory interpretation which had been rejected by Ct of Appeals and Supreme Court)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(ct found no abuse of discretion in Bd's refusal to extend certification for two years; if E complied with bargaining order, one more year of bargaining should suffice; if not, it will again be charged and *year will not have begun to run*)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(*Sec. 9(c)(1)(A) substantial interest requirement* is not jurisdictional prerequisite to Bd action; rather it is *administrative expedient only*, adopted to enable Bd to determine for itself whether or not further proceedings and warranted)

5991 CONTRACT CONSTRUCTION

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. **613 F.2d 1102 (C.A.D.C.) (1980)**
(unless Bd's construction of contract which differs from that of arbitrator is arbitrary or capricious Bd's interpretation is entitled to great weight)

6300 ADDUCTION OF ADDITIONAL EVIDENCE

6375 EVIDENCE WHICH MAY NOT BE ADDUCED

6375-5000 Events subsequent to Board order

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(Bd, not ct, must receive new evidence if it is proper for it to be received)

6800 CONTENTIONS NOT RAISED BEFORE BOARD

6817 ISSUES NOT RAISED BEFORE BOARD WILL NOT BE CONSIDERED BY COURT

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

6833 OBJECTIONS NOT URGED BEFORE BOARD MAY NOT BE CONSIDERED

6833-2800 Failure to except to proposed findings and order conclusive

6833-2825 Except where Board enlarges order

N.L.R.B. v. Local 345, Utility Workers of New England **612 F.2d 598 (C.A. 1)**
(where ALJ's *Order* did not include all items in *Remedy* section, no exceptions filed, and Bd adopted *pro forma* ALJ's recommended D/O, Bd has no right to clarify its Order where such modification imposes additional and material burdens on Respondents w/o allowing parties to be heard on propriety of additional relief notwithstanding party filed no exceptions with Bd and Bd has inherent power to modify its orders)

6833-5000 Unless failure to do so excused because of extraordinary circumstances

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(SCt decision in *Yeshiva* inapplicable to instant case and therefore not the *extraordinary development* which might otherwise excuse appellant's failure to raise the managerial employee exception before the Bd)

6833-8400 Objections concerning orders

N.L.R.B. v. Local 345, Utility Workers of New England **612 F.2d 598 (C.A. 1)**
(where ALJ's *Order* did not include all items in *Remedy* section, no exceptions filed, and Bd adopted *pro forma* ALJ's recommended D/O, Bd has no right to clarify its Order where such modification imposes additional and material burdens on Respondents w/o allowing parties to be heard on propriety of additional relief notwithstanding party filed no exceptions with Bd and Bd has inherent power to modify its orders)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(E's objection that Bd failed to take additional testimony or request statements of position or briefs from counsil on remand overruled as E is precluded from raising this objection where E made no effort to introduce new evidence, filed no statements or briefs during entire time case pending before Bd on remand; moreover, E did not move for reconsideration or leave to adduce additional evidence after Bd issued decision)

6850 MOOTNESS OF ISSUES

6850-5000 Changes after Board order affecting propriety of enforcement may be considered

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(ct in its supervisory role may decline to enforce affirmative orders which have become futile at time enforcement is sought)

6875 LACK OF INDISPENSABLE PARTY MAY BE RAISED AT ANYTIME

N.L.R.B. v. Doug Neal Management Company **620 F.2d 1133 (C.A. 6, 1980)**
(notwithstanding issue of indispensable party had not been previously raised, ct not precluded from *sua sponte* raising it)

7200 JUDGMENT

7233 ENFORCEMENT OF BOARD ORDER

7233-3300 As modified

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(Ct may adjust its relief to exigencies of case in accordance with equitable principles which govern judicial action)

7242 DENIAL OF ENFORCEMENT OF BOARD ORDER

N.L.R.B. v. Doug Neal Management Company **620 F.2d 1133 (C.A. 6, 1980)**
(enforcement denied where order not supported by substantial evidence as Ees discharged because E installed automated equipment which eliminated work of Ees, and indispensable party, owner of building, not joined; making building manager party not sufficient, especially where Bd ordered reinstatement of 3 discharged Ees)

7283 VACATION OF JUDGMENT

7283-7500 Vacated because of intervening Supreme Court decision

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

7700 REHEARING

8100 REMAND TO BOARD

8101 GENERALLY

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(remand to Bd not appropriate and proceedings dismissed where petitioner sought no remand, Bd refused to resolve issue of faculty status and college had been put to needless expense and unwarranted prejudicial publicity; passage of time undoubtedly accompanied by changes in faculty personnel)

8101-3300 Effect of remand

8101-3350 'Law of the case' binding on Board

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**
(on remand for new evidence on issue of whether or not U had in fact operated legitimate exclusive hiring hall service provided for in contract, ct's prior opinion that there was not substantial evidence thereof was law of case, and ct rejected Bd's holding that, given existence of contract providing for exclusive hiring hall, evidence thereof was irrelevant, and system as operated was legitimate)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(absent demonstration of significant modification of situation since prior unpublished memorandum decision involving same parties, such decision remains law of case for purposes of res judicata or collateral estoppel even though under ct's rules unpublished memorandum does not have precedential weight)

8150 PURPOSE OF REMAND

8150-1100 Reconsideration in light of court opinion

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **248 NLRB No. 040**
(pursuant to ct remand, Bd rescinded portion of its order requiring E to restore original organization administering health care insurance plan in place of new insurance company whose unilateral substitution by E for original organization was found unlawful unilateral change by Bd as well as by ct)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(impermissibly broad order remanded to Bd for modification with respect to requirements for U access to plants and inclusion of notice in appropriate company publications)

N.L.R.B. v. Gulf States Canners, Inc. **598 F.2d 896 (C.A. 5)**
(remand to apply appropriate standard in assessing whether action justifies setting aside election)

St. Elizabeth Community Hospital v. N.L.R.B. **625 F.2d 123 (C.A. 9, 1980)**
(First Amendment challenge to Bd's jurisdiction over charitable hospital operated by religious order held timely raised, notwithstanding contention that issue could have been litigated at R proceedings before RD and no new or previously unavailable evidence was offered or special circumstances alleged to require Bd's consideration, since it is sufficient that hospital raised First Amendment issue in R proceedings before Bd and did not defer its challenge to enforcement proceedings; case remanded to Bd for further consideration in light of SCt's opinion in *NLRB v. Catholic Bishop*, 440 U.S. 490)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(issue of whether current three year contract was bar to election ptn remanded to Bd to explain, why *membership* as used in contract should be interpreted differently depending on whether word appeared in U security clause or health benefit clause, and whether petitioner, to its detriment, reasonably relied on contract's cover dates in determining when to file election ptn; Bd must follow its own precedent by excluding extrinsic evidence from its consideration or explain why its rules should be disregarded; ct not allowed to substitute different rationale for that provided by Bd)

8150-1700 Reconsideration in light of changed circumstances

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(remand to Bd to consider additional evidence pertaining to necessity of bargaining order where ct reversed Bd on one ULP finding, as this is independent ground for review and differs from situation where ct upholds Bd order in toto)

8150-3300 Reconsideration in light of subsequent Board decision

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. **622 F.2d 1195 (C.A. 4, 1980)**
(remand to Bd to consider applicability of present day controlling case law to E's objections to election based on alleged misrepresentation by U where Bd decision based on *Shopping Kart*, which has since been overruled by *General Knit Co.*)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(where RD made decision on objections to elections using *Hollywood Ceramics* standard and Bd later adopted less stringent *Shopping Kart* standard before returning to former standard and Bd's adoption of RD's decision occurred under latter standard, *Shopping Kart*; no denial of due process where Bd merely adopted report as written as it is not assumed that Bd considered objection under standard other than that used by RD)

8150-4900 Fashion appropriate remedy

Mass & Feduska, Inc. v. N.L.R.B. **632 F.2d 714 (C.A. 9, 1980)**
(case remanded to Bd to fashion appropriate remedy for 8(b)(3) violation, where ct found, contrary to Bd, that U's threat to strike to compel payment by E of E's contribution to fringe-benefit trust funds on behalf two Ees, who were statutory supervisors, was violative of 8(b)(3))

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**
(where bargaining order found inappropriate case remanded for Bd to consider appropriate remedies, including direction of second election)

8150-7700 Additional findings

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. **613 F.2d 110[illegible] A.D.C. (1980**

(remand for further analysis of collective bargaining agreement and arbitra tor's interpretation of it where arbitrator decided E had not complied wit agreement with regard to contracting out but ALJ and Bd decided contrac ing out proper since E complied with bare notice and bargaining requir ments of *Fibreboard* since not clear to what extent ALJ and Bd considere contract and arbitrator's interpretation of it in view of strong policy favorin deference to arbitrator's interpretation of bargaining agreement)

8150-7710 Objections to election

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. **622 F.2d 1195 (C.A. 4, 198**
(where RD determines that objections to election do not require hearin RD, and not objecting party, is responsible for transmitting *whole* record (evidence considered in reaching decision) to Bd for its review on appe notwithstanding R/R 102.69(g) places responsibility for submission of do ments on objecting party)

N.L.R.B. v. RJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 19**
(where E filed objections to election based on U misconduct and fi affidavits of supervisory Ees substantiative allegations but RD, w/o hear recommended certification of election, Bd's adoption of recommendation o ordering hearing or having before it complete Regional Office file co tutes on abuse of discretion as being arbitrary and capricious; certifica set aside and remanded to Bd for hearing)

8150-7715 Challenges to ballots

N.L.R.B. v. Polyflex M Company **622 F.2d 128 (C.A. 5, 1**
(case remanded to Bd for evidentiary hearing where Ee affidavit ra substantial and material issue that would warrant setting aside electio presenting prima facie case that U representatives made statements w were subject to reasonable interpretation by Ees that they could a initiation fees by joining U prior to election)

Crown Coach Corporation v. N.L.R.B. **626 F.2d 865(T) (C.**

(enforcement denied and case remanded for further hearing where ct f prejudicial error in denial of E during hearing on objections to electi question Ee witness on issue of U agency in regard to Ee miscon

8150-7725 Determination of majority status

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3,**
(where Bd erred in applying total exclusion of evidence from pre period, ct remanded case to Bd for reconsideration of ALJ's finding t did not have reasonable grounds based on objective considerations f lieving that U did not enjoy majority support at time E refused to ba

N.L.R.B. v. Scott Printing Corporation and J&J House of Composition **612 F.2d 783 (**
(remand to Bd to determine if Bd should have allowed E to assert go doubt in U's majority status because ALJ failed to find that U d represent majority of Ees and Bd adopted ALJ's findings, thus there findings on record concerning good faith doubt defense)

8150-7730 Supervisory status

N.L.R.B. v. Tio Pepe, Inc. **629 F.2d 964 (C.A.**
(ct denied enforcement of bargaining order and remanded case to evidentiary hearing on two issues advanced in E's mtn to reopen

8150-7730—Cont.

since E made sufficient *prima facie* factual showing of after-discovered evidence that *captains* had promised other dining room Ees that, if U won, captain's distribution of pooled tips would be adjusted in their favor, which, if sustained later at full hearing, would undermine Bd's reasons for its denial of supervisory status for *captains* in unit of dining room Ees and further significantly affect election by way of monetary inducement for U support)

8150-7740 Backpay determination

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**

(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

8150-7750 Motivation for respondent's action

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

(remand to determine E's motivation for discharges where Bd had failed to adequately assess validity of rule prohibiting distribution of wage data pursuant to which Ees discharged; Bd would be required to determine whether application of rule impermissibly burdened protected activity, or whether E was not compelled to allow distribution of wage data on its property because other means available to disseminate material; anti U motivation irrelevant if rule itself invalid)

Carlson Roofing Co., Inc. v. N.L.R.B. **627 F.2d 77 (C.A. 7, 1980)**

(no remand for evidence of U animous to establish 8(a)(3) violation where 8(a)(1) violation carries same remedy)

8150-7755 For consideration of appropriate relief

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**

8150-7777 Explain basis for decision

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

(remand to determine E's motivation for discharges where Bd had failed to adequately assess validity of rule prohibiting distribution of wage data pursuant to which Ees discharged; Bd would be required to determine whether application of rule impermissibly burdened protected activity, or whether E was not compelled to allow distribution of wage data on its property because other means available to disseminate material; anti U motivation irrelevant if rule itself invalid)

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**

(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

J. P. Stevens & Co., Inc. v. N.L.R.B. **612 F.2d 881 (C.A. 4)**

(remand not warranted where Bd failed to discuss denial of litigation expenses because costs are awarded only for frivolous or dilatory litigation and issues here were arguable and brought in good faith)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**

(remand for clarification on remedy ordering publishing company to disclose amounts paid to non-unit editorial writers where Bd ordered inconsistent remedies in *Times Herald, 237 NLRB 922*, and *Amphlett, 237 NLRB 955*, and inadequate explanation for maintaining confidentiality between E and non-unit writers failed to provide sufficient basis for review)

8150-7799 Other

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**

(remand to Bd for further consideration of use of date of filing charge rather than date of refusal to bargain in measuring 10(b) limitation period, where ALJ found that benchmark date for exclusion of evidence was date when ULP charge was filed, while E contended that when Act is not being given its literal application to filing of charge but is being used to bar evidence in defending against such charge, 10(b) period should be measured from time of E's refusal to bargain)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(Bd's 8(a)(1) findings, concerning interview Ee was compelled to attend, vacated and case remanded to Bd so Bd could determine what type of interview was conducted; record contained no evidence concerning occurrences at interview)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**

(ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew that Ee's complaints were concerted activity)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(reconsideration of bargaining order partly based on unlawful discharge finding by Bd where ct overruled Bd finding of ULP)

8150-8800 Modification of order

Local 345, Utility Workers of New England (New England Power Service Company) **250 NLRB No. 007**

(where ct remanded case to Bd to allow parties opportunity to present objections to proposed amendments to R/O which Bd, *sua sponte*, made to ALJ's order, parties could not once again contest ULP findings adopted by Bd as this exceeded scope of remand)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**

(impermissibly broad order remanded to Bd for modification with respect to requirements for U access to plants and inclusion of notice in appropriate company publications)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**

(remand to consider modification of order to cease giving preference in referral to U leaders and to reinstate policy of giving Es 5 names from which to choose, where subsequent to Bd decision new bargaining agreement was ratified which provides that hiring hall is to be operated under modified rule-of-5 which gives Es choice among U members but which protects U officers against potential hiring discrimination)

8600 COSTS AND FEES

8667 AWARDS OF ATTORNEY FEES UNDER FRAP 38

J. P. Stevens & Co., Inc. v. N.L.R.B. **612 F.2d 881 (C.A. 4)**

(remand not warranted where Bd failed to discuss denial of litigation expenses because costs are awarded only for frivolous or dilatory litigation and issues here were arguable and brought in good faith)

9100 CERTIORORI TO SUPREME COURT

9600 SUPREME COURT PROCEDURES

9675 REMAND FROM SUPREME COURT

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(decision to disclose petitioner's reports is reviewable agency action under APA and petitioner is person adversely affected and aggreived w/i APA provision affording right of judicial review of agency action; remand to ct to consider whether contemplated disclosures would violate APA)

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. **435 U.S. 497 (SCt, 1978)**

(claims of impariment of contractual obligations and violation of due process remanded to District Ct where State enacted statute after collective bargaining agreement took effect)

N.L.R.B. v. Baylor University Medical Center **439 U.S. 9 (SCt, 1980)**

(judgment refusing to enforce Bd order vacated and case remanded to D.C. Ct of Appeals for reconsideration of no-solicitation rule with respect to hospital cafeteria in light of ct's decision in *Beth Israel Hospital v. N.L.R.B. No. 77-152 (June 22, 1978)*)

833 PROCEEDINGS ON CONTEMPT OF COURT JUDGMENT

0100 GENERALLY

1700 PROCEDURE

1770 EVIDENCE

N.L.R.B. v. Croft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**

(affidavits taken by Bd in its investigation fall w/i FOIA Exemption 7(A) and need not be disclosed prior to hearing even in civil contempt cases as herein; there is no distinction between enforcement proceedings before ALJ and contempt proceedings as both are instituted to enforce compliance with Act, and Bd's prosecutorial function remains the same; risk of intimidation of witnesses because of premature disclosure is no less a risk in contempt cases; and it is irrelevant that there is no reason to suspect that E herein would attempt to coerce a witness)

N.L.R.B. v. Croft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**

(applying FOIA Exemption 7(A) in contempt proceeding, Special Master required Bd, ten days prior to hearing, to provide E with summary of expected testimony of exempted witnesses w/o disclosing their names, and required Bd, on day any such witness is to testify, to provide E with any affidavit or prior statement of such witness w/i its possession)

1796 COSTS OF PROCEEDINGS

1796-6700 Taxable costs

1796-6742 Costs of litigation

N.L.R.B. v. Nichols of Ohio, Inc. et al. **No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))**

(Bd to be reimbursed for all costs and expenditures including reasonable counsel fees)

3300 ACTIONS CONSTITUTING CONTEMPT OF JUDGMENTS

3333 8(a)(3) JUDGMENTS

3333-9000 Inadequate offer of reemployment to discriminatees

N.L.R.B. v. Nichols of Ohio, Inc. et al. **No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))**

(delayed and inadequate reinstatement of salesclerks where they received lower pay, were assigned cleaning rather than selling jobs and worked fewer hours)

5000 TERMS OF PURGATION OF ADJUDICATION IN CONTEMPT

6700 SANCTIONS TO ENFORCE JUDGMENT

6725 FINES

N.L.R.B. v. Nichols of Ohio, Inc. et al. **No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))**

(prospective compliance fine of $10,000 on E and further compliance fine of $200 per day for each further day of noncompliance)

8300 DEFENSES

850 PROCEEDINGS ANCILLARY TO BOARD PROCEEDING

2000 SUBPOENA ENFORCEMENT PROCEEDINGS

2017 JURISDICTION OF U.S. DISTRICT COURTS

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD **632 F.2d 30 (C.A. 7, 1980)**
(district ct had no jurisdiction to review Bd decision denying certification to expedited election conducted pursuant to 8(b)(7)(C) during period in which challenges to validity of election were being resolved; ct rejected contention that Bd's rule that election becomes valid under 8(b)(7)(B) when all challenges and objections to it have been resolved is contrary to Act when applied to expedited election conducted under 8(b)(7)(C))

2033 SCOPE OF COURT INQUIRY

2033-2000 Pendency of proceeding before Board

Ithaca College v. Thomas W. Seeler, RD **(unreported) (D Ct. NY, 1978)**
(E's C seeking to enjoin pending Bd election and to require Bd to re-open hearing dismissed by ct for lack of jurisdiction, since Bd did not act contrary to specific provision of Act but, rather, exercised its statutory power, no substantial constitutional question was involved, and E failed to show likelihood of success on the merits and irreparable injury)

2033-6000 Exhaustion of administrative remedies to quash subpoena

Hedison Manufacturing Company v. Robert S. Fuchs, RD **C.A. No. 78-0498 (D Ct. RI, Oct. 10, 1978 (unreported))**
(in denying E a protective order to defer introduction of tape recording of speech of E's president to Ees, ct noted E had failed to exhause administrative remedies)

2050 MATERIALS SOUGHT BY SUBPOENA

2050-6000 Statements of witnesses

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**
(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

2083 DEFENSES TO COMPLIANCE

2083-2800 Infringement of constitutional rights

Hedison Manufacturing Company v. Robert S. Fuchs, RD **C.A. No. 78-0498 (D Ct. RI, Oct. 10, 1978 (unreported))**
(there is no Fifth or Fourteenth Amendment issue involved in admissibility of evidence in ULP proceeding)

4000 INJUNCTIVE RELIEF UNDER SECTION 10(j)

4032 SCOPE OF COURT INQUIRY

4032-3300 Commerce jurisdiction

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**
(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

4032-6700 Reasonable cause to believe unfair labor practice has occurred

Samuel M. Kaynard, RD v. Mego Corp. **484 F.Supp. 167 (D Ct NY, 1980)**
(to decide whether bargaining unit is accretion to existing unit or not, it must first be determined that such bargaining unit truly represents uncoerced majority of Ees involved; here, majority of Ees at new plant had expressly disavowed bargaining representative who had entered into contract with E; thus, reasonable cause exists to support claim that recognition of U at new plant constitutes ULP)

4070 EMPLOYER CONDUCT INVOLVED

4070-0800 Assistance to union

Samuel M. Kaynard, RD v. Mego Corp. **484 F.Supp. 167 (D Ct NY, 1980)**
(to decide whether bargaining unit is accretion to existing unit or not, it must first be determined that such bargaining unit truly represents uncoerced majority of Ees involved; here, majority of Ees at new plant had expressly disavowed bargaining representative who had entered into contract with E; thus, reasonable cause exists to support claim that recognition of U at new plant constitutes ULP)

Edwin Youngblood, RD v. Solar Excavating, Inc. **486 F.Supp. 159 (D Ct OK, 1980)**
(request for temporary inj denied where E had recognized U w/o election and evidence does not show that ULP's were so pervasive as to raise serious question that majority of Ees did not freely sign U authorization cards)

4078 UNION CONDUCT INVOLVED

4078-2800 Strikes

Johansen v. Operating Engineers, Local 12 (Maas & Feduska, Inc.) **No. CV 2765 (D Ct. CA, Aug. 2, 1978 (unreported))**
(inj granted where U engaged in economic actions including strikes and withholding of services of Ee members, in furtherance of demand that E withdraw its ptn for review of Bd's D/O in violation of Sec. 8(b)(3))

4078-5600 Refusal to negotiate in good faith

Johansen v. Operating Engineers, Local 12 (Maas & Feduska, Inc.) **No. CV 2765 (D Ct. CA, Aug. 2, 1978 (unreported))**
(inj granted where U engaged in economic actions including strikes and withholding of services of Ee members, in furtherance of demand that E withdraw its ptn for review of Bd's D/O in violation of Sec. 8(b)(3))

4085 RELIEF AGAINST EMPLOYERS

4085-0800 Bargain with majority representative

Samuel M. Kaynard, RD v. Palby Lingerie, Inc. **625 F.2d 1047 (C.A. 2, 1980)**
(district ct's granting interim bargaining order appropriate, where, based on authorization cards, U had clear majority and E then engaged in such egregious ULP's as to make fair election impossible; fact that no final unit determination had yet been made did not preclude issuance of bargaining order where there was substantial basis for RD's unit determination and if bargaining order were denied by ct, later Bd approval of unit determination would come at time when those violating Act might have been able to accomplish their unlawful objective before being placed under any legal restraint)

4085-3300 Reinstate employees

Samuel M. Kaynard, RD v. Palby Lingerie, Inc. **625 F.2d 1047 (C.A. 2, 1980)**
(district ct's order that E offer reinstatement to two active and open U supporters was just and proper where their discharges risked serious impact on Ee interest in unionization)

Samuel M. Kaynard, RD v. Palby Lingerie, Inc. **625 F.2d 1047 (C.A. 2, 1980)**
(reinstatement warranted where Ees testified that Ee was discharged when she failed to heed instructions of E agents to cease distributing U literature on company premises during lunch break, since E articulated no special circumstances adequate to overcome presumption against restrictions on Ee distributions; alternatively, reinstatement also warranted on theory that E enforced its no distribution policy in discriminatory manner, where prior to U's organizing efforts, E permitted such activities on sale of candy by Ees during lunch period)

4085-3300—Cont.

Samuel M. Kaynard, RD v. Palby Lingerie, Inc. **625 F.2d 1047 (C.A. 2, 1980)**
(reinstatement warranted for U activist whose belief that she had been subjected by E to pattern of harassment and discriminatory assignments was supported by record and buttressed conclusion that she had been constructively discharged)

4093 RELIEF AGAINST UNIONS

4093-4000 Instruct members to cease striking or picketing

Johansen v. Operating Engineers, Local 12 (Maas & Feduska, Inc.) **No. CV 2765 (D Ct. CA, Aug. 2, 1978 (unreported))**

(U enjoined from engaging in economic actions, including strikes and withholding services of Ee members, and required to notify every U member employed by E that U has no objection to Ees' performing services for E where U took economic action to force E to withdraw ptn to review Bd's D/O in violation of Sec. 8(b)(3))

4093-8000 Bargain in good faith

Johansen v. Operating Engineers, Local 12 (Maas & Feduska, Inc.) **No. CV 2765 (D Ct. CA, Aug. 2, 1978 (unreported))**

(U enjoined from engaging in economic actions, including strikes and withholding services of Ee members, and required to notify every U member employed by E that U has no objection to Ees' performing services for E where U took economic action to force E to withdraw ptn to review Bd's D/O in violation of Sec. 8(b)(3))

6000 INJUNCTIVE RELIEF UNDER SECTION 10(l)

6001 GENERALLY

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO **483 F.Supp. 1218 (D Ct WI, 1980)**

(10(l)injunctive relief is interlocutory pending final determination of ULP charges before Bd)

6001-7500 Nature and purpose

6001-7560 Preservation of status quo

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**
(Sec. 10(l) inj may be just and proper where necessary to preserve status quo so that Bd's ultimate decision will not be rendered moot by intervening events, or where necessary to prevent disruptions in commerce or future ULP's)

Reed Johnston, RD v. Thonet, a Simmons Company **No. C-C-78-357 (D CT. NC, Dec. 22, 1978 (unreported))**

(reinstatement of two Ees held *just and proper* to restore and preserve status quo where Bd met its burden of establishing reasonable cause to believe that the ULP's occurred, and its theories of fact and law were substantial and not frivolous)

6007 PROCEDURE

6007-4200 Parties

6007-4250 Intervention

6007-4250-5000 Charging party

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(request by general contractor who, as primary E, was charging party, to enjoin U from engaging in consumer appeal publicity directed against restaurant which contractor was constructing, denied, since publicity was not directed at contractor but at restaurant because of its contracting policies, and 8(b)(4) publicity proviso encompasses U's publicity which appeared *truthful* and was result of primary dispute with restaurant; moreover, contractor was not party to action herein and Bd, as petitioner, did not seek relief requested by contractor)

6021 SCOPE OF COURT INQUIRY

6021-0100 Generally

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO **483 F.Supp. 1218 (D Ct WI, 1980)**

(prerequisite for granting injunction is finding by ct that *reasonable cause* exists to believe that violation has been committed and that injunction relief is *just and proper*)

6021-5000 Standard of court's inquiry

6021-5009 Commerce

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**
(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

6021-5036 Reasonableness of regional director's interpretation

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**
(ct must conclude that legal theories relied on by RD are not w/o substance)

6021-5072 Reasonable cause to believe Act has been violated

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**
(ct must determine whether RD has reasonable cause to believe that elements of ULP are present, and RD need only show existence of credible evidence even if disputed, together with reasonable inferences which support his conclusions; district ct's findings herein held not erroneous)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI
1980**

(U's picketing, questioning workers on site, or calling and writing letters t
neutral subcontractors and owner of site had objective of inducing or en
couraging such individuals to c/d/b with primary general contractor, an
U's direct and indirectpressure on secondary parties had as its goal pressur
ing of primary E to agree to U's contract demands; consequently, reasonabl
cause exists to believe 8(b)(4)(B) was violated)

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. N
Aug. 31, 1979 (unreported**

(reasonable cause to believe ULP exists where U, having dispute wit
contractor employed by neutral E, picketed gate set aside for exclusive us
of neutral Ees and caused such Ees to engage in work stoppages, eve
though a gate had been reserved by E for exclusive use of contractor's Ee

6021-5081 Existence of ULP not within court's province

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1675 (D Ct. NY, O
10, 1978 (unreporte**

(in passing upon application for inj, ct is not called upon to finally dec
issues presented, rather ct's role is limited to determining whether there
some significant possibility that picketing herein would violate the A

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO **483 F.Supp. 1218 (D Ct
19**

(ct isnot called upon to decide whether violation has been committed; rath
Congressplaced ultimate determination with Bd, subject to review by cts
appeals)

6049 GRANT OF RELIEF

6049-1200 Considerations in denying relief

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct
19**

(request by general contractor who, as primary E, was charging party
enjoin U from engaging in consumer appeal publicity directed against res
rant which contractor was constructing, denied, since publicity was
directed at contractor but at restaurant because of its contracting poli
and 8(b)(4) publicity proviso encompasses U's publicity which appea
truthful and was result of primary dispute with restaurant; moreover,
tractor was not party to action herein and Bd, as petitioner, did not
relief requested by contractor)

6049-1250 Mootness

Winifred D. Morio, RD v. Operating Engineers, Local Union No. 94-94A **79-Civ. 626-CSH (D Ct.
Feb. 26, 1979 (unrepor**

(no inj granted where picketing has ceased after settlement of contract
because there must be existing condition for inj to issue notwithstan
possibility exists that U could revert to prior illegal conduct)

6049-2500 Considerations in granting relief

6049-2525 Damage to employer's business

Edwin H. Bennett, Acting RD v. Local 456, Teamsters
78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(equitable relief found just and proper in view of tremendous pressure which could be brought to bear by picketing neutral Es with correspondingly little impact on primary E)

6049-2558 Nature of conduct involved

Milo V. Price, RD v. Operating Engineers, Local 953
Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))

(U. having dispute with contractor employed by neutral E. picketed gate set up by neutral E for exclusive use of its Ees, even though E had also reserved a gate for exclusive use of contractor's Ees)

6049-3700 Duration of injunction

6049-3767 Until final adjudication of Board

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO
483 F. Supp. 1218 (D Ct WI, 1980)

(pending final disposition by Bd. U enjoined from engaging in picketing, orders, directives, instructions, requests or appeals, or by any other means, in threatening, coercing, or restraining neutral Es in order to force them to c/d/b/ with primary E, or to force or require primary E to entire into agreement prohibited by Sec. 8(e))

Milo V. Price, RD v. Operating Engineers, Local 953
Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))

(it is just and proper that, pending final disposition by Bd. U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6049-3775 Only so long as reserved gate is properly used

Milo V. Price, RD v. Operating Engineers, Local 953
Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))

(should primary E, its Ees, suppliers for whose exclusive use a gate was reserved by neutral E, be permitted to use such gate, then provisions of injunctive order herein shall be stayed and shall be reinstated only upon good cause shown in ct)

6049-7500 Acts charged and similar acts

6049-7522 'Any like or related acts or conduct'

Milo V. Price, RD v. Operating Engineers, Local 953
Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))

(it may fairly be anticipated that unless enjoined U will continue to repeat acts and conduct specified herein or similar or like acts and conduct in violation of 8(b)(4)(B)(i) and (ii))

6049-7588 Relief must be 'just and proper'

Milo V. Price, RD v. Operating Engineers, Local 953
Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))

(it is just and proper that, pending final disposition by Bd. U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6063 COURT OF APPEALS REVIEW

6063-6000 Scope of review

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B.
586 F.2d 872 (C.A. 1, 1980)

(on appeal from order granting injunctive relief, role of this ct is usual limited one; it applies the clearly erroneous standard to district ct's findings and reviews for errors of law and abuse of discretion)

6084 CONDUCT INVOLVED

6084-2100 Coercion, intimidation, violence

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B.
586 F.2d 872 (C.A. 1, 1980)

(district ct did not err in granting inj restraining U from violating 8(b)(4)(A) pending final disposition by Bd of ULP charges alleging U attempted to induce Ee to stop work and threatened E with future problems in order to force him to become member of multi-E association which represented trucking firms in their negotiations with U)

6084-3100 Reserved gate picketing

Milo V. Price, RD v. Operating Engineers, Local 953
Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))

(it is just and proper that, pending final disposition by Bd, U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6084-3400 Consumer boycott

Edwin H. Bennett, Acting RD v. Local 456, Teamsters
78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(U enjoined from picketing Franchisees of primary E where Franchisees were found to be neutrals in U's dispute with primary E; moreover picketing of Franchisees was held not to be protected struck product picketing where business at Franchisees' stores was derived almost exclusively from sale of primary E's products)

6084-6100 Picketing

6084-6175 Recognition picketing

Johansen v. Plumbers, Local 398 (Robbins Plumbing and Heating)
No. CV 78-2939 (D Ct. CA, Aug. 9, 1978 (unreported))

(inj granted where U had not filed timely ptn for election)

Johansen v. Carpenters, Local 1752 (Eastport Development Co.)
No. CV 78-2520 (D Ct. CA (unreported))

(inj granted where U had not filed timely ptn for election)

6084-6800 Product boycott

Edwin H. Bennett, Acting RD v. Local 456, Teamsters
78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(U enjoined from picketing Franchisees of primary E where Franchisees were found to be neutrals in U's dispute with primary E; moreover picketing of Franchisees was held not to be protected struck product picketing where business at Franchisees' stores was derived almost exclusively from sale of primary E's products)

6084-7500 Secondary boycott

Scott v. Joint Council of Teamsters (Calif. Dump Truck Owners Assn.)
No. CV-79-0139 (D Ct. CA, Jan. 26, 1979 (unreported))

(finding reasonable cause to believe U violated 8(b)(4)(ii)(B), ct granted temporary inj. pending final disposition by Bd. whereby U was enjoined from in any manner threatening or coercing owner-operators of for-hire dump trucks used by Es to leave construction project until they became members in good standing)

6084-9000 Maintaining or enforcing agreement prohibited by 8(e)

Scott v. Joint Council of Teamsters (Calif. Dump Truck Owners Assn.)
No. CV-79-0139 (D Ct. CA, Jan. 26, 1979 (unreported))

(finding reasonable cause to believe Us and E associations in construction industry violated 8(e), ct granted temporary inj. pending final disposition by Bd. whereby Us and E associations were enjoined from maintaining or enforcing contract provisions which designated work to be done at site of construction as including any driving to, from or in connection with hauling materials to or from any source or disposal site on the one hand, and a geographical site of construction on the other hand)

6091 DEFENSES

6091-1000 Ally-relationship of secondary Employer

Edwin H. Bennett, Acting RD v. Local 456, Teamsters
78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(Franchisees of primary E held neutral Es with respect to U's dispute with primary E, notwithstanding that primary E and Franchisees were wholly dependent on each other for economic survival, where each Franchise was owned by person or persons having no affiliation with primary E, and U only sought to picket some but not all of 750 Franchises with correspondingly little impact on primary E)

6091-1600 Consumer picketing

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B.
613 F.2d 890 (C.A.D.C.) (1979)

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific

6091-1600—Cont.

contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))**

(picketing struck E's products held not w/i decision of Tree Fruits, 377 U.S. 58, where neutral Franchisees sold almost exclusively products of struck E, and thus picketing which followed struck products was necessarily aimed at the Franchisee's business in general)

6091-8400 Publicity proviso

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(request by general contractor who, as primary E, was charging party, to enjoin U from engaging in consumer appeal publicity directed against restaurant which contractor was constructing, denied, since publicity was not directed at contractor but at restaurant because of its contracting policies, and 8(b)(4) publicity proviso encompasses U's publicity which appeared *truthful* and was result of primary dispute with restaurant; moreover, contractor was not party to action herein and Bd, as petitioner, did not seek relief requested by contractor)

8000 INJUNCTIVE RELIEF UNDER SECTION 10(e)

867 PROCEEDINGS COLLATERAL TO BOARD PROCEEDINGS

0100 GENERALLY

2500 PROCEEDINGS AGAINST AGENCY

2520 PROCEEDINGS TO ENJOIN OR MANDAMUS BOARD ACTION

2520-6200 Jurisdiction of court

2520-6225 No jurisdiction except where constitutional issue or agency action contrary to express statutory provision

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. **No. 78 C 749 (D Ct. IL, Sept. 28, 1978 (unreported))**

(determination of whether E is carrier or not is factual in nature and not dependant solely on construction of statute; thus, District Ct precluded from jurisdiction)

2520-6225-0100 Generally

National Engineers and Professionals Association, et al. v. N.L.R.B. et al. **CV78-2138-RMT (D Ct. CA, July, 31, 1978 (unreported))**

(ct has no constitutional basis to assert jurisdiction where U seeking to have ct award inj relief requiring Bd to hold mail ballot election because generally District Cts lack jurisdiction to review Bd rulings in R proceedings and issue does not fall w/i any exceptions to rule)

2520-6225-4000 Actions found not contrary to express statutory provisions

Touche Ross & Co.; et al. v. Securities and Exchange Commission, et al. **Dkt. No. 78-6095 (C.A. 2, May 10, 1979 (unreported))**

(Myers v. Bethlehem Shipbuilding Corp. principle of no judicial relief for supposed or threatened injury before prescribed adminsitrative remedy exhausted still viable and Leedom v. Kyne exception interpreted narrowly)

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. **599 F.2d 816 (C.A. 7, 1979)**

(appellate ct upheld district ct's decision that it lacked subject matter jurisdiction to review Bd decision dismissing representation ptn on grounds that company was excluded from NLRA Sec. 2(2) definition of E as it was an air carrier subject to jurisdiction of RLA, and that its petitioned-for truck-drivers' work was integral part of its air carrier operations; Bd did not disregard clear, specific statutory directive, and there was support for its decision)

Florida Board of Business Regulation, etc., et al., v. N.L.R.B. **497 F.Supp. 599 (D Ct. FL, 1980)**

(State would have standing to seek review if ULP proceedings ensue; problem is that *no* ULP proceedings may ensue (see p. 7))

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. **497 F.Supp. 599 (D Ct. FL, 1980)**

(District Ct will assert jurisdiction under *Leedom v. Kyne*, 358 U.S. 184, where circumstances show that party seeking relief will not otherwise have avenue for review if jurisdiction declined, and here, if E acceded to certification and Bd order so that no ULP proceeding will ensue, State may be precluded from seeking review under Sec. 10 of Act; alternatively, D Ct could assert jurisdiction under *Fay v. Douds*, 172 F.2d 720 since there is substantial claim by State that action taken by Bd has violated constitutional rights of complaining party; State's 10th Amendment rights)

Carol Estes and 166 Other Warehouse Facility Employees v. N.L.R.B. **No. 78-4068 (D Ct. KS, Jan. 5, 1979 (unreported))**

(ct lacked jurisdiction over suit challenging Bd's application of its *blocking charge rule* to decertification ptn; at time RD applied rule and dismissed ptn, there were pending not merely ULP charges filed by U but formal Cs issued on behalf of Bd concerning those charges, and it was reasonable to assume RD had some idea whether U's charges were substantial and whether representation election could fairly be held)

Gene Patterson v. N.L.R.B. **626 F.2d 862(T) (D Ct NC, 1979)**

(ct held that it lacked subject matter jurisdiction over Bd's exercise of *blocking charge* rule; Bd had exercised discretion specifically entrusted to it by Congress and cts and applied rule to ongoing, not stale, ULP proceedings, not mechanistically, but with consideration for E's statement of position as well as its history of ULPs)

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(district ct has no jurisdiction to review Bd decision under *Leedom v. Kyne* rationale, 358 U.S. 184, unless there was clear disregard by NLRB of specific and unambiguous statutory directive contained in the Act)

Combustion Engineering, Inc., etc. v. Curtis L. Mack, RD, etc. **CIV-2-79-67 (D Ct. TN, May 8, 1979 (unreported))**

(no denial of due process by Bd refusal to delay election to permit E to retain additional counsel; Bd orders in certification proceedings are not directly reviewable by cts and none of the judicially recognized exceptions appear to be applicable to instant situation where E had not engaged sufficient counsel to handle its labor-management matters seasonably)

2520-6225-6000 Actions found to raise constitutional questions

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. **497 F.Supp. 599 (D Ct. FL, 1980)**

(District Ct will assert jurisdiction under *Leedom v. Kyne*, 358 U.S. 184, where circumstances show that party seeking relief will not otherwise have avenue for review if jurisdiction declined, and here, if E acceded to certification and Bd order so that no ULP proceeding will ensue, State may be precluded from seeking review under Sec. 10 of Act; alternatively, D Ct could assert jurisdiction under *Fay v. Douds*, 172 F.2d 720 since there is substantial claim by State that action taken by Bd has violated constitutional rights of complaining party; State's 10th Amendment rights)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct. IL)**

(GC's refusal to issue complaint based upon alleged ULPs, not violation of a constitutional right, and hence district ct lacked subject matter jurisdiction to review GC's refusal)

2520-6225-8000 Actions found not to raise constitutional questions

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. **497 F.Supp. 599 (D Ct. FL, 1980)**

(Bd's assertion of jurisdiction over jai alai industry does not violate Tenth Amendment, as regulation if that industry does not impose a direct obligation upon the stante but is indirect interference through Congressional effort to regulate same object)

Combustion Engineering, Inc., etc. v. Curtis L. Mack, RD, etc. **CIV-2-79-67 (D Ct. TN, May 8, 1979 (unreported))**

(no denial of due process by Bd refusal to delay election to permit E to retain additional counsel; Bd orders in certification proceedings are not directly reviewable by cts and none of the judicially recognized exceptions appear to be applicable to instant situation where E had not engaged sufficient counsel to handle its labor-management matters seasonably)

2520-7500 Board actions sought to be enjoined

2520-7533 Representation proceedings

2520-7533-4200 Conduct of election

Gould, Inc. v. Robert S. Fuchs, et al. **486 F.Supp. 164 (D Ct. CT, 1980)**

(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

National Engineers and Professionals Association, et al. v. N.L.R.B. et al. **CV78-2138-RMT (D Ct. CA, July, 31, 1978 (unreported))**

2520-7533-4200—Cont.

(ct has no constitutional basis to assert jurisdiction where U seeking to have ct award inj relief requiring Bd to hold mail ballot election because generally District Cts lack jurisdiction to review Bd rulings in R proceedings and issue does not fall w/i any exceptions to rule)

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. **497 F. Supp. 599 (D Ct. FL, 1980)**

(on remand, ct denies State's request for preliminary inj to enjoin Bd from asserting jurisdiction over jai alai industry in R proceeding; Bd's action held not arbitrary and capricious in absence of showing that Bd's unwillingness to assert jurisdiction over dog and horse racing industries prejudiced state interest)

2520-8700 Board action sought to be mandated

2520-8733 Representation proceedings

2520-8733-2500 Conduct of election

Gould, Inc. v. Robert S. Fuchs, et al. **486 F.Supp. 164 (D Ct. CT, 1980)**

(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

2520-8733-7500 Vacation of certification

Semi-Alloys, Inc. v. Winifred D. Morio, RD **490 F.Supp. 422 (D Ct. NY, 1980)**

(where RD revoked certification of election after U presented newly discovered evidence of E's ULPs, E's mtn for injunction on TRO against RD to keep her from conducting hearing denied for lack of jurisdiction where no statutory provision prohibiting RD's action exists, administrative remedies have not been exhauted and E will be able to obtain review of Bd's actions in circuit ct)

2540 PROCEEDINGS TO ENJOIN OR MANDATE GENERAL COUNSEL ACTION

2540-5000 Jurisdiction of court

2540-5001 Generally

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(in dismissing action for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file complaint and to require him to do so, ct held that, unless ct can ascertain that GC acted in excess of his statutorily delegated authority, ct has no jurisdiction to require him to issue complaint, and case dismissed for want of jurisdiction, since Act is not so clear that ct can say with reasonable certainty that GC exceeded his delegated authority in ruling that state agency was not statutory E)

2540-5033 No statutory basis for jurisdiction to review

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(GC's refusal to file complaint alleging ULP)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**

(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

Semi-Alloys, Inc. v. Winifred D. Morio, RD **490 F.Supp. 422 (D Ct. NY, 1980)**

(where RD revoked certification of election after U presented newly discovered evidence of E's ULPs, E's mtn for injunction on TRO against RD to keep her from conducting hearing denied for lack of jurisdiction where no statutory provision prohibiting RD's action exists, administrative remedies have not been exhauted and E will be able to obtain review of Bd's actions in circuit ct)

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**

(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-5067 Arbitrary and capricious action constituting denial of constitutional due process

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**

(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-6700 Action sought to be enjoined

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**

(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-8300 Action sought to be mandated

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(ct affirmed district ct's dismissal of action by E association for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file requested complaint and to require him to file complaint; GC's refusal to issue complaint is ordinarily not reviewable by federal cts unless failure to act turns on mistake of law, and GC's opinion in instant case that state agency is not statutory E, and therefore proscriptions of Sec. 8(e) do not apply was not in excess of his statutorily delegated authority)

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**

(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

2540-8367 Issuance and prosecution of complaint

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**

(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL**

(ptn to require RD and GC to reverse their decision not to issue complaint
or alleged ULP charges, dismissed, since the decision was w/i RD's and
GC's discretion and ct has no jurisdiction to mandamus the RD and GC

2590 ACTIONS FOR DECLARATORY JUDGMENT

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A.**

(ct affirmed district ct's dismissal of action by E association for declarator
judgment and writ of mandamus against GC to declare unlawful GC
refusal to file requested complaint and to require him to file complaint; GC
refusal to issue complaint is ordinarily not reviewable by federal cts unle
failure to act turns on mistake of law, and GC's opinion in instant case th
state agency is not statutory E, and therefore proscriptions of Sec. 8(e)
not apply was not in excess of his statutorily delegated authority)

2595 DISCOVERY

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. O June 30, 1978 (unreporte**

(subpoena issued by defendant in OSHA proceeding against Bd attorney
his work product quashed where defendant failed to seek GC's permiss
for disclosure)

5000 PROCEEDINGS BY BOARD TO PROTECT BOARD JURISDICTION

5020 ENJOINING STATE EXERCISE OF JURISDICTION

867-PROCEEDINGS COLLATERAL TO BOARD PROCEEDINGS

5020-3300 STATE COURT PROCEEDINGS

Arel Lynn Rodgers v. John H. Fanning, et al. **No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))**

(Bd's mtn for dismissal of third party C filed by individual for indemnity against Bd in malicious prosecution suit brought by E in state ct against individual for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, granted; suits against Bd are suits against the United States and cannot be maintained w/o consent of Congress, and exclusive remedy for tort claims is Federal Tort Claims Act which, however, excludes any claims arising out of malicious prosecution; consequently, third party C against Bd cannot be maintained)

Arel Lynn Rodgers v. John H. Fanning, et al. **No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))**

(Bd's mtn to dismiss malicious prosecution suit brought by E in state ct against discharged Ee for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, denied; although preemption is required when state law clearly conflicts with policies established by federal law, threat that malicious prosecution suits would chill exercise of right of access to Bd is insufficient to outweigh interests of state in protecting its citizens from such suits)

Arel Lynn Rodgers v. John H. Fanning, et al. **No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))**

(Bd's mtn to dismiss malicious prosecution suit brought by E in state ct against discharged Ee for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, denied; although preemption is required when activities are either arguably protected or arguably prohibited, preemption is not justified when aggrieved party does not have a reasonable opportunity to invoke Bd's jurisdiction which E could not have done herein and, consequently, arguably protected nature of Ee's conduct was not sufficient to justify preemption)

Arel Lynn Rodgers v. John H. Fanning, et al. **No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))**

(Bd's mtn to stay malicious prosecution proceedings in state ct brought by E against discharged Ee for filing false charges and fabricating evidence in prior Bd ULP proceeding, granted; Bd's primary jurisdiction does not extend to cases in which E, as herein, has no acceptable method of invoking, or inducing other party to invoke Bd's jurisdiction; consequently, while action was not necessarily preempted, ct deferred to Bd's determination of probable cause to believe that suit herein infringes on protected conduct and stayed action pending Bd's determination)

5060 INTERVENTION IN FEDERAL COURT PROCEEDINGS

5060-6700 Bankruptcy proceedings

In re W. T. Grant Company, and Charles G. Rodman, as Trustee of the Estate of W.T. Grant Company, Bankrupt v. Alton Rinier, as agent for Certain Employees of Bankrupt **620 F.2d 319 (C.A. 2, 1980)**

(ct held executory contract of Ees of debtor-in-possession is binding on latter if it receives benefits under it which occurred here when debtor-in-possession permitted workers to continue in its employ during Chapter XI proceeding)

In re W. T. Grant Company, and Charles G. Rodman, as Trustee of the Estate of W.T. Grant Company, Bankrupt v. Alton Rinier, as agent for Certain Employees of Bankrupt **620 F.2d 319 (C.A. 2, 1980)**

(ct held severance pay claims of bankrupt's Ees are entitled to first priority as costs and expenses of administration, severance pay is compensation for termination and is not a form of wages that accrues from day to day)

5060-6767 To protect proceeding or order

Shippers Interstate Service, Inc. v. N.L.R.B. **618 F.2d 9 (C.A. 7, 1980)**

(where company is being reorganized rather than liquidated and assets are not threatened, Bankruptcy Rule 11-44 shall not apply and regulatory proceedings of NLRB are not subject to automatic stay provisions of that rule)

7500 CERTIFICATION OF QUESTIONS TO BOARD BY COURT

The Carpenters District Council of North Central Texas v. North Texas Contractor Assoc. et al. **No. CA3-76-1151-F (D Ct. TX, Feb. 21, 1979 (unreported))**

(on mtn of Bd that it could only decide contractual questions which ct had asked Bd to decide in context of ULP proceedings, ct withdrew its certification of questions to Bd)

883 PROCEEDINGS UNDER OTHER STATUTES

2500 FREEDOM OF INFORMATION ACT

2501 GENERALLY

2501-3300 Purpose of Act

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

2501-6700 Legislative history

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(Legislative history of FOIA shows provisions exempting specified material from disclosure were only meant to permit agency to withhold information--not meant to mandate non disclosure)

2550 PRODUCIBILITY OF DOCUMENTS

2550-0100 Generally

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. **600 F.2d 1027 (C.A. 2, 1979)**

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**

(applicability of FOIA exemptions must be determined in context of specific individual documents and request for *any documents indicating Region's final determination of the petitioner's showing of interest or lack thereof* is too general)

2550-1400 Advice and appeals memoranda

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(advice memorandum privileged from disclosive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

2550-2100 Intra-agency memoranda

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(memorandum transmitting Regional Office file to Office of Appeals with Acting RD's comment on appeal at time when no action whatever had begun on deciding appeal, held w/i Exemption 5 protection of predecisional communications; RD's comment was clearly intra-agency advisory opn w/i scope of *executive privilege*)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(memorandum to acting RD setting forth acting Regional attorney's Review of Appeals in a case, hold exempt as intra-agency predecisional communication)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(memorandum prepared by Bd Ee assigned to investigate case for consideration by RD in making final determination whether to issue C, held exempt, where memorandum recommends action on basis of tentative conclusions reached by a committee of Bd Ees)

2550-2800 Statements of witnesses

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(report by Bd Ee summarizing facts related to him in interview with certain, named individual, held w/i scope of Exemption 5, especially since signed affidavit of said individual relating to same factual matters had been made available to party seeking report)

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(district ct is w/o jurisdiction to entertain E's C of Bd's refusal to issue investigatory subpoenas requested under 29 USC Section 161(1), where sub- poenas required prehearing release of all evidence in Bd's control pertaining to the charges, including documents as well as names, addresses, and statements of witnesses; prehearing discovery questions are committed to Bd's discretion)

The Capital Times Company v. N.L.R.B. **483 F.Supp. 247 (D Ct. WI) (1980)**

(refusal to disclose statements and affidavits obtained by Bd agents during their investigation of ULP charge filed by plaintiff upheld notwithstanding that charge was dismissed and case closed; *exemption 7(a) of FOIA* correctly relied upon by Bd, since statements sought by plaintiff were relevant to pending enforcement proceeding which grew out of labor controversy in which plaintiff was involved but not as party)

2550-4200 Names of witnesses

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(district ct is w/o jurisdiction to entertain E's C of Bd's refusal to issue investigatory subpoenas requested under 29 USC Section 161(1), where sub- poenas required prehearing release of all evidence in Bd's control pertaining to the charges, including documents as well as names, addresses, and statements of witnesses, prehearing discovery questions are committed to Bd's discretion)

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2550-7000 Authorization cards

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. **600 F.2d 1027 (C.A. 2, 1979**

(authorization cards are exempt from discovery during Bd proceedings and from disclosure under FOIA, but here where cards are material to defend ants defense of criminal charges against them their fundamental right to du process of law must be balanced against confidentiality of cards and disclo sure is proper but only to defendants' attorneys)

American Airlines, Inc. v. National Mediation Board; et al. **588 F.2d 863 (C.A. 2, 197**

(U authorization cards held exempt from disclosure as commercial informa tion where U supplied information to National Mediation Board in relian on regulations that it would be kept confidential; information relates delicate area of labor relations as it deals with U's effort to obtain majori support and certification and disclosure would adversely affect U's compet tive position with other Us and e itself)

Howard Johnson Company, Inc. v. N.L.R.B. **618 F.2d 1 (C.A. 6, 19**

(district ct reversed and case remanded to Bd with directions to ent summary judgment in favor of Bd position on U authorization cards falli w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (19**

(Exemption 6 of FOIA precludes E from obtaining signed U authorizat cards or other Bd documents which reveal voting preferences of individ Ees because such disclosure would be an invasion of personal privacy held authorization cards fell w/i meaning of *similar files* of exemption re ing to give term narrow and technical meaning)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. Feb. 5, 1979 (unreport**

(authorization cards are important to Bd's investigation of ULP and exempt from disclosure under Exemption 7(A) of FOIA notwithstan that initially cards were executed and forwarded to Bd for purpose only, at best, indirectly related to law enforcement; and under Exempti to prevent unwarranted invasion of personal privacy for if Ees kne would be able to see signed cards they might be reluctant to sign)

2567 SCOPE OF EXEMPTIONS

2567—Cont.

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(Office of Appeals case progress sheet which memmorialized case history on appeal indicating information such as when appeal was filed and when it was decided, not exempt under FOIA)

2567-3300 Exemption 4

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**

(Legislative history of FOIA shows provisions exempting specified material from disclosure were only meant to permit agency to withhold information-- not meant to mandate non disclosure)

American Airlines, Inc. v. National Mediation Board; et al. **588 F.2d 863 (C.A. 2, 1978)**

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Quickie Manufacturing Corp. v. N.L.R.B. **No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))**

(Bd Form 4069 held more appropriate under Exemption 5 regarding *memorandums* than Exemption 4, since it involves a particular document rather than general information)

2567-5000 Exemption 5

Quickie Manufacturing Corp. v. N.L.R.B. **No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))**

(Form 4069 held not *final opn* compelling disclosure but exempt because w/i executive privilege protecting *memoranda* which would *intrude on predecisional processes*)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(advice memorandum privileged from disclosive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

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(report by Bd Ee summarizing facts related to him in interview with certain, named individual, held w/i scope of Exemption 5, especially since signed affidavit of said individual relating to same factual matters had been made available to party seeking report)

2567-6700 Exemption 6

Howard Johnson Company, Inc. v. N.L.R.B. **618 F.2d 1 (C.A. 6, 1980)**

(district ct reversed and case remanded to Bd with directions to enter summary judgment in favor of Bd position on U authorization cards falling w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) **615 F.2d 728 (C.A. 6) (1980)**

(Exemption 6 of FOIA precludes E from obtaining signed U authorization cards or other Bd documents which reveal voting preferences of individual Ees because such disclosure would be an invasion of personal privacy; ct held authorization cards fell w/i meaning of *similar files* of exemption refusing to give term narrow and technical meaning)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

2567-8300 Exemption 7

2567-8367 1974 Amendment

2567-8367-1400 Exemption 7(A)

Quickie Manufacturing Corp. v. N.L.R.B. **No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))**

(Form 4069 would not be held exempt under Exemption 7, since asserted possible use in future ULP proceeding is not sufficient where ct precedent has held relationship to pending formal proceeding was required)

N.L.R.B. v. Martins Ferry Hospital Association **No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))**

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement, and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

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(refusal to disclose statements and affidavits obtained by Bd agents during their investigation of ULP charge filed by plaintiff upheld notwithstanding that charge was dismissed and case closed; *exemption 7(a) of FOIA* correctly relied upon by Bd, since statements sought by plaintiff were relevant to pending enforcement proceeding which grew out of labor controversy in which plaintiff was involved but not as party)

2583 SUITS TO ENFORCE OBLIGATION

2583-1500 Court procedure

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. **600 F.2d 1027 (C.A. 2, 1979)**

2583-2000 Exhaustion of administrative remedies

Quickie Manufacturing Corp. v. N.L.R.B. **No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))**

(plaintiff not required to exhaust administrative remedies by appealing GC's refusal of FOIA request since Bd's adament position against disclosure of documents relative to elections and its winning SCt reversal of decision in only circuit where its position was rejected have shown appeal would be futile; decision whether to require exhaustion of administrative remedies is discretionary, and plaintiff's time constraint given the imminence of the election outweighs considerations favoring requirement of an administrative appeal)

The Capital Times Company v. N.L.R.B. **483 F.Supp. 247 (D Ct. WI) (1980)**

(statutory policy allows agency to determine *first* the merits of FOIA request)

2583-4000 Enjoining of Board proceedings

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(although district ct does have jurisdiction to hear plaintiff's claims under FOIA and if appropriate to order production of Bd records, the ct lacks power to enjoin Bd proceedings in order to enforce requirements of FOIA)

2583-5500 Issuance of subpoenas

Hall of Mississippi, Inc. v. N.L.R.B. **No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))**

(district ct is w/o jurisdiction to entertain E's C of Bd's refusal to issue investigatory subpoenas requested under 29 USC Section 161(l), where subpoenas required prehearing release of all evidence in Bd's control pertaining to the charges, including documents as well as names, addresses, and statements of witnesses; prehearing discovery questions are committed to Bd's discretion)

2583-6000 Stays pending appeal

National Steel Products Company v. N.L.R.B. **C78-293A (D Ct GA, Oct. 12, 1978 (unreported))**

(ct granted Bd stay on order prohibiting Bd from conducting consolidated R and ULP hearing unless Bd turned over requested statements of witnesses, since decision by SCt in *Robbins Tire and Rubber Co.* virtually ensures that Bd will succeed on merits of appeal and made issuance of inj improper and unnecessary to protect any legally cognizable rights or plaintiff)

2583-8000 Attorney's fees and costs

Westinghouse Electric Corporation v. N.L.R.B. **497 F.Supp. 82 (D Ct PA, 1980)**

(notwithstanding Bd's denial of plaintiff's FOIA request for affidavit from closed file of current Ee of E, and Bd's subsequent disclosure immediately prior to oral arguments in this ct on cross mtns for summary judgment, ct denied E's ptn for attorney's fees where benefit from disclosure to public was marginal, interest in affidavit was private one, purpose of prior FOIA litigation was argumentation of civil discovery for potential use in other litigation, E was not indigent, and refusal by Bd to disclose was not unreasonable)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. **No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))**

(request for reasonable attorney's fees from United States, denied as inappropriate even assuming, as contended, that party requesting such fees had *substantially prevailed*, because substantial portion of file it requested had been disclosed since commencement of instant litigation; both parties had operated in good faith toward resolving controversy and each should bear its own counsel fees)

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